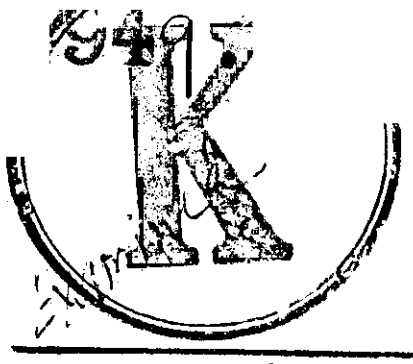

File No. S. Bijapur

Legal DEPARTMENT

A BRANCH

Subject:— Suits Bijapur P:36=E

Civil Suit No. 366 of 1948

Shidagowda Chanagowda
Patil - - - Plff.

Vs

The Province of Bombay - - Deft.

For a permanent injunction restraining Govt- from forfeiting and selling Survey No. 28 of Salalgaon for recovery of Tagai dues of Govt-.

Civil Appeal No. 19 of 1950

File No. S. Bijapur 3/49

S. Bijapur 3/49

Bij 3/49

CONTENTS.

Legal Department File No. S. Bijapur 3/49

Sr. No.	Compilation No.	Subject	Pages.
		Suits Bijapur	
		C.S. No. 366 of 1948	
		Shidagowda Channagowda Patil vs. Province of Bbay.	
		for a permanent injunction restraining Govt. from forfeiting and selling Survey No. 28 of Satalgaon for recovery of Tagavi dues of Govt.	
1)	Printed L.D. G.R No. 1130 31-1-49	Sanctioning the defence of the suit.	3
2)	L.D. G.R No. 4241-H 27-3-50	Sanctioning the institution of an appeal	61.
3)	L.D. G.R No. 8947 29-5-52	Recording the result of an appeal.	77.

Information as required by Rule 118 of the Law Officers' Rules.

1.(i)	the number of the suit.	No. 366 of 1948.
(ii)	the date on which and the court in which it was instituted.	10-9-1948, in the Court of the Civil Judge Sr. Dn.Bijapur
(iii)	Names of the parties.	1. Chiddangonda Chanagonda Patil, Pleader, Bijapur. ... Plaintiff. Vs. 1. The Province of Bombay. ... Defendant.
(iv)	the amount or value of the claim.	The suit is valued at Rs. 5/- for injunction.(vide para 4 of the plaint.)
(v)	the date fixed by the Court for the first hearing.	25-10-1948.
(vi)	whether notice of the action has been given under Section 80 of the Civil Procedure Code and if so the date of delivery of such notice.	Yes. on 5-7-1948 (Pl. vide at pages 525 to 529).
2 (a)	a copy of the plaint in the regional language together with copies of any documents or list of documents annexed to the plaint	A copy of the plaint is among the case papers at pages 551 to 555.

2 (b).

Civil Suit No. 366 of 1948.

In the Court of theCivil Judge, Senior Division, Bijapur.

.....

1. Chidagonda Chanagowda Patil, Lingayat age 44, occupation pleader, Bijapur - Plaintiff.

Vs.

1. The Province of Bombay (The summons on the Collector of Bijapur. ------ Defendant.

Herein the above named plaintiff states as under :-

1. One Ningappa Shivappa Metri of Satalgaon (Paragana Indi, talrka Indi) mortgaged his Satalgaon R.S.Nos. 28,213 and 214 to the - plaintiff in the year 1342 to secure a loan of Rs. 1800/- advanced to him by the - plaintiff. To recover the said amount and interest thereon, the plaintiff had to file civil suit No. 145 of 1937 in the court of the Civil Judge, Senior Division at Bijapur and as a consequence of the said

As clearly mentioned the note dated 21-9-48, the execution of the decree was first applied for by Mr. S.C.Patil, the plaintiff in darkast proceedings No. 397/1938 only in respect of the first instalment of Rs. 470/- which had then become due, the execution

suit a decree for Rs. 2736/- with future interest at 6 % on the principal amount of Rs. 1800/- and for costs was passed against the said Ningappa Shivappa Metri on 23-12-1937. Since the mortgaged properties were insufficient to satisfy the full claim of the plaintiff, the plaintiff had to get attached before judgment, Satalgaon S.Nos. 215,216 and 209 of the said Shivappa Metri. Thereafter, the plaintiff took out execution proceedings in Darkhast No., 397 of 1938 and brought to sale Satalgaon S.No. 28. Pending the said Darkhast proceedings it transpired that the above mentioned Ningappa Shivappa Metri had borrowed Rs. 900/- on 12-1-1921 from Government under Tagavi Khata No. 29 by securing the said debt by hypothecating Stalgaon S.Nos. 28,215 and 216. Further, before Satalgaon S.No.28 was brought to auction a Jahirnama (proclamation of sale) was prepared by the Revenue authorities stating that the sale of the said Stalgaon S.No. 28 would be allowed subject to the payment of Tagavi loan of Rs. 1534-12-0 with which the said land was encumbered. So bona fide believing that the said amount of Rs. 1534-12-0 was in fact the amount for which the land was liable, the plaintiff bade and purchased the land. The sale was confirmed and sale certificate was issued and the land (S.No.28) was given to the possession of the plaintiff. The plaintiff is in possession of the land since the date of possession and enjoying it peacefully for the last 6 years. Meanwhile on enquiry into the Tagavi Khata of the said Ningappa Metri, the plaintiff found that the sum of Rs. 1534-12-0 was made up of two different and disconnected items as follows :-

As stated above Ningappa Metri had borrowed Rs. 900/- under Tagavi Khata No.29 on 12-1-1921. And in addition he had borrowed Rs. 800/- on 20-1-1930 under a separate Tagavi Khata No. 29/A by hypothecating altogether a different S.No. 209. And it was further found out that the tagai loan of Rs. 1534-12-0 mentioned in the aforesaid Jahirnama was made up by adding together the said tagavi loans under the said two khatas No. 29 of 12-1-1921 and 29/A of 20-1-1930. So plaintiff paid off all the debt due under the Tagavi loan Khata No. 29 of 12-1-1921 and protested against the recovery of the debt due under Tagavi loan Khata No. 29/A of 20-1-1930, as Satalgaon S.No. 28 purchased by the plaintiff is neither primarily nor collaterally liable for the amount due under Khata No. 29/A as altogether a separate S.No: 209 was encumbered to secure the last mentioned debt. But the Collector of Bijapur without paying any heed to the repeated protests of the plaintiff against recovery of Tagai dues of Ningappa Metri under khata No. 29/A, has served plaintiff with notice issued on 28-6-1948 under No. T.A.G.S.R.3 from the office of the Mamlatdar, Taluka Indi and (which notice was) received by the plaintiff on 1-7-1948, saying that he would forfeit Satalgaon S.No. 28 and would bring it to sale to recover the Tagai dues of proceedings was as usual had transferred to the Collector who had forwarded to the Mamlatdar Indi. The Court had directed the sale of S.No. 28 of the land of the debtor (i.e. Judgment debtor) Ningappa Metri. The original darkhast papers recorded in the Dist. Court were obtained by the Collector and gone through. In the Execution of the darkhast it is incumbent upon the Executing Officer to draw up the scheme for the liquidation of the debtor's dues and to adopt such a course which would ensure the liquidation of the debtor's dues and to adopt such a course which would ensure the liquidation of the Judgment debtor's debts and at the same time, safeguard the interest of the debtor as per provisions contained in Rule 7 of the Third Schedule to the Civil Procedure Code. S.No. 28 which had to be sold in the realization of the decretal amount, had a tagai encumbrance. Taking into consideration the various liabilities of the J.D. e.g. tagai dues and decretal amount the Mamlatdar consolidated all the said dues and offered S.No. 28 to sale subject to the encumbrance of the said dues thinking that all the debts of the J.D. would be liquidated from the sale proceeds of S.No. 28 only. Section 7(1) of the Land Improvement Loans Act 1883 has set forth various modes of recovery of the tagai dues and section 7(3) of the said Act provides discretion to the Collector to determine and resort to any of the said modes of recovery. As said above the sale notice dated 30-12-40 was issued fixing the date of sale on 3-3-1941 mentioning clearly therein that the land S.No. 28 would be put to sale subject to the tagai encumbrance of Rs. 1534-12-0. It was open for Mr. Patil (Plaintiff) who having the legal knowledge, to protest when the sale notice was issued and to point out to the Mamlatdar that he (i.e. Mamlatdar) could not put all the tagai dues as encumbrance on S.No. 28. Besides, he having obtained the previous permission of Court to bid in the sale (for he himself was the Decree holder) offered the highest bid of Rs. 2004-12-0 including the tagai encumbrance i.e. Rs. 470 his decretal and + Rs. 1534-12-0 tagai dues. Even

(Notes to para 1 of the plaint Contd).

5 9

Even after the sale he could have submitted to the Collector an application under Rule,90 of the Order XXI to the Civil Procedure Code pointing out the material irregularity, before the sale was confirmed by him. The plaintiff has neither even protested nor pointed out the material irregularities at any stage in the conduct and execution of the darkhast proceedings. The sale was confirmed on 15-4-1941 and sale certificate was issued and he was put in possession of the land. As bound by the sale conditions the plaintiff is liable for the payment of the tagai dues of Rs. 1534-12-0 and that his contention that he is liable for the dues in respect of the tagai loan of Rs. 900/- only which was advanced for the improvement of S.No. 28 and other lands, was untenable. (P. 505). The debt Adjustment Board, Indi which was adjusted all the debts of the agricultural debtor Hin appa, has also held that the debtor Hin appa is free from the liability to pay the tagai dues for the payment of which the plaintiff is responsible (Pl. vide copy of the Board's Award at Pp. 419-44) of the case papers).

74 94

Ningappa Metri borrowed under Tagavi dated ~~xx~~ Ningappa Khata No. 29/A by hypothecating Satalgaon S.No. 209 only. This act of the Collector of Bijapur purporting to forfeit and sell, the plaintiff's S.No. 28 is unauthorised and illegal act of forfeiting and bringing to sale plaintiff's land and for which purpose this suit has been filed after notice to the Collector of Bijapur under Section 80 of the Code of Civil Procedure.

2. The plaintiff sent his notice under Section 80 of the code of Civil Procedure to the Collector of Bijapur on 5-7-1948 and the same was received by the Collector on 6-7-1948 and two months have elapsed since service of notice on Collector.

The plaintiff had issued a similar notice on 20-7-1942 under Section 80 of the Civil Procedure Code contending that S.No. 28 was offered as a collateral security for the tagai loans and was not primarily liable for the tagai encumbrance and that the improved S.Nos. 215 & 216 of the J.D. should have been first put to sale (PP.393-395 But he did not file a suit then. The thing is that he wants to postpone the recover some how. The suit has now been filed by him. It may be, he might have thought, that the matter (i.e. recovery) will not be pressed till the suit is finally disposed of a that will take a lot of time.

se within the
jurisdiction of this Court at Indi and Bijapur on 1-7-1948 when the plaintiff received the said unauthorised and illegal notice of forfeiture and sale of his Satalgaon S.No. 28 without paying any heed to the repeated protests of the plaintiff.

no remarks.

this suit is brought to restrain and prohibit the Collector of Bijapur by issuing permanent injunction against him --- restraining him (the Collector of Bijapur) from the purported illegal and unauthorised act of forfeiting and bringing to sale plaintiff's S.No. 28 for the recovery of the tagavi loan of Ningappa Metri, the suit is valued at Rs. 5/- for injunction. The value of the suit for jurisdiction of Court and for pleader's fees is the same as for permanent injunction.

-do-

5. As the cause of action has arisen within the jurisdiction of this Court and as the defendant and plaintiff reside within the jurisdiction of this court and as the property affected by the unauthorised and illegal act of the Collector of Bijapur is situate within the jurisdiction of this court, this court has jurisdiction to try this suit.

-do-

6. Plaintiff prays :-

(a) As the purported act of the Collector of Bijapur to forfeit and sell the plaintiff's Belagaon S.No. 28 to recover the Tagavi loan of Hingappa Metri under his separate Tagavi loan khata No. 29/A of 20-7-1930 is unauthorised and illegal and as plaintiff is entitled to have permanent and temporary mandatory injunction issued against the Collector of Bijapur restraining and prohibiting him from taking the purported illegal and unauthorised act of forfeiting and selling plaintiff's said land and to get the threatened order to forfeit and sell plaintiff's said land cancelled, plaintiff prays that the court may kindly be pleased to restrain and prohibit the Collector of Bijapur from forfeiting and selling plaintiff's land and to issue further order to the Collector of Bijapur to cancell once for all the illegal and unauthorised order to forfeit and sell plaintiff's land to recover Tagavi loan of Hingappa Metri.

Please vide notes against para 1 above.

(b) To award the costs of this suit.

No remarks

(c) To grant any other relief or reliefs to the plaintiff regard being had to all the circumstances of the case and looking to the equities of the case as deemed fit in the matter.

-do-

(d) To reserve permission to plaintiff to amend the plaint if need be.

-do-

A decree may kindly be drawn in terms of the above prayers.

Note :- Advanced copies of plaint are sent by registered post to the Collecto of Bijapur and to the Mamlatdar of Indi.

Bijapur,
10-9-1948.

Sd. S.G.Patil,
Plaintiff.

I, Bidagowda Grangowda Patil, Lingayat, age 44, occupation pleader, the plaintiff in the suit, do hereby most solemnly affirm that what is stated above in paras 1 to 6 of the plaint is true to my best knowledge and belief.

Bijapur,
10-9-1948.

Sd. S.G.Patil,
Plaintiff.

Filed in court on 10-9-1948.

Sd. R.K.Shirguppi,
Pleader for the plaintiff.

28
13 573

Presented on 10-9-1948.

Sd.
clerk-of the court.

Civil Suit No. 366 of 1948.

In the Court of the Civil Judge, Senior Division,

Bijapur.

1. Shidagowda Chanagowda Patil Lingayat
age 44, occupation pleader, Bijapur plaintiff.

Vs.

1. The Province of Bombay(summons to be served on the Collector of Bijapur). defendant.

Herein the above named plaintiff states as under:-

1. One Ningappa Shivappa Metri of Stalgaon(Paragana Indi taluka Indi) mortgaged his Satalgaon Rs.S.No.28,213 and 214 to the plaintiff in the year 1932 to secure aloan of Rs.1800 advanced to him by the plaintiff. To recover the said amount and interest thereon, the plaintiff had to file civil suit No 145 of 1937 in the court of the Civil Judge, Senior Division at Bijapur and as a consequence of the said suit a decree for Rs.2736/- with future interest at 6% on the principal amount of Rs.1800/- and for costs was passed against the said Ningappa Shivappa Metri on 23-12-1937. Since the mortgaged properties were insufficient to satisfy the full claim of the plaintiff, the plaintiff had to get attached before judgment, Satalgaon S.Nos. 215,216 and 209 of the said Shivappa Metri. Thereafter, the plaintiff took out execution proceedings in Darkhast No.697 of 1938 and brought to sale Satalgaon S.No.28. Pending the said darkhast proceedings it transpired that the above mentioned Ningappa Shivappa Metri had borrowed Rs.900 on 12-1-1921 from Government under Tagavi Khata No.29 by securing the said debt by hypothecating Satalgaon S.Nos.28,215 and 216. Further, before Stalgaon S.No.28 was brought to auction a Jahirname(proclamation of sale) was prepared by the Revenue Authorities stating that the sale of the said Satalgaon S.No.28 would be allowed subject to the payment of Tagavi loan of Rs.1534-12-0 with which the said land was

encumbered. So bona fide believing that the said amount of Rs. 1534-12-0 was in fact the amount for which the land was liable, the plaintiff bade and purchased the land. The sale was confirmed and sale certificate was issued and the land(S.No.28) was given to the possession of the plaintiff. The plaintiff is in possession of the land since the date of possession and enjoying it peacefully for the last 6 years. Meanwhile on enquiry into the Tagavi Khata of the said Ningappa Metri, the plaintiff found that the sum of Rs.1534-12-0 was made up of two different and disconnected items as follows:- As stated above Ningappa Metri had borrowed Rs.900/- under a Tagavi Khata No. 29 on 12-1-1921. And in addition he had borrowed Rs 800/- on 20-1-1930 under a separate Tagavi Khata No.29/A by hypothecating altogether a different S.No. 209. And it was further found out that the Tagavi loan of Rs.1534-12-0 mentioned in the aforesaid Jahirnama was made up by adding together the said Tagavi loans under the said two khatas No.29 of 12-1-1921 and 29/A of 20-1-1930. So plaintiff paid off all the debt due unde the Tagavi loan khata No.29 of 12-1-1921 and protested against the recovery of the debt due under Tagavi loan khata No. 29/A of 20-1-1930, as Satalgaon S.No.28 purchased by the plaintiff is neither primatily nor collaterally liable for the amount due under Khata No.29/A as altogether a separate S.No.209 was encumbered to secure the last mentioned debt. But the Collector of Bijapur without paying any heed to the repeated protests of the plaintiff against recovery of Tagavi dues of Ningappa Metri under Khata No.29/A has served plaintiff with notice issued on 28-6-1948 under No. T.A.G.S.R.3 from the offipe of the Mamlatdar Taluka Indi and (which notice was) received by the plaintiff on 1-7-1948, sayi that he would forfeit Satalgaon S.No.28 and would bring it to sale to recover the Tagavi dues of Ningappa Metri borrowed under Tagavi Khata No.29/A by hypothecating Satalgaon S.No.209only. This act of Collector of Bijapur purporting to forfeit and sell, the plaintiff S.No.28 is unauthorised and illegal. Hence it is necessary to restrain and prohibit the Collector of Bijapur from the unauthoris and illegal act of forfeiting and bringing to sale plaintiff's lan and for which purpose this suit has been filed after notice to the Collector of Bijapur under section 80 of the Code of Civil Procedu

2. The plaintiff sent his notice under section 80 of the Code

of Civil Procedure to the Collector of Bijapur on 5-7-1948 ~~and the same was received by the Collector of Bijapur on 6-7-48~~ and the same was received by the Collector of Bijapur on 6-7-48 and two months have elapsed since service of notice on Collector

3. The cause of action arose within the jurisdiction of this court at Inci and Bijapur on 1-7-1948 when the plaintiff received the said unauthorised and illegal notice of forfeiture a of sale of his Satalgaon S.No.28 without paying any need to the repeated protests of the plaintiff.

4. Since this suit is brought to restrain and prhibit the Collector of Bijapur by issuing permanent injunction against him restraining him(the Collector of Bijapur) from the purported illegal and unauthorised act of forfeiting and bringing to sale plaintiff's S.No.28 for the recovery of the Tagavi loan of Ningappa Metri, the suit is valued at Rs.5/- for injunction. The value of the suit for jurisdiction of Court and for pleader's fees is the same as for permanent injunction.

5. As the cause of action has arisen within the jurisdiction of this court and as the defendant and plaintiff reside within the jurisdiction of this court and as the property affected by th the unauthorised and illegal act of the Collector of Bijapur is situate within the jurisdiction of this court, this court has jurisdiction to try this suit.

6. Plaintiff prays:-

(a) As the purported act of the Collector of Bijapur to forfeit and sell the plaintiff's Satalgaon S.No.28 to recover the Tagavi loan of Ningappa Metri under his separate Tagavi loan Khata No.29/A of 20-1-1930 is unauthorised and illegal and as plaintiff is entitled to have permanent and temporary mandatory injunction issued against the Collector of Bijapur restraining and prohibiting him from taking the purported illegal and unauthorised act of forfeiting and selling plaintiff's said land and to get the threatened order to forfeit and sell plaintiff's said land cancelled, plaintiff prays that the court may kindly be pleased to restrain and prohibit the Collector of Bijapur from forfeiting and selling plaintiff's land and to issue further or or to the Collector of Bijapur to cancell once for all the

illegal and unauthorised order to forfeit and sell pla[illegible] land to recover Tagavi loan of Ningappa Metri.

(b). To award the costs of this ~~xxxxx~~ suit.

(c). To grant any other relief or reliefs to plaintiff regard being had to all the circumstances of the case and looking to the equities of the case as deemed fit in the matter.

(d). To reserve permission to plaintiff to amend the plaint if need be.

A decree may kindly be drawn in terms of the ab[illegible]

Note:- Advanced copies of plaint are sent by registered post to the Collector of Bijapur and to the Mamlatdar of Indi.

Bijapur.
10-9-1948. Sd. Sd.
Pleader for plff. Plaintiff.

I, Shidagowda Changowda Patil, Lingayat, age 44, occupati[illegible] pleader, the plaintiff in the suit, do hereby, most solemnly affirm th[illegible] what is stated above in paras 1 to 6 of the plaint is true to my best knowledge and belief.

Bijapur,
10-9-1948. Sd.
Plaintiff.

Filed in Court on 10-9-1948.

Pleader for the plaintiff.

* True C[illegible]

Dist. Govt. Pleader, Bijapur.

Bijapur Civil Suit No. 366 of 1948.

A This suit is filed by Mr.S.C.Patil, a pleader of Bijapur, against Government for a permanent injunction restraining Government from forfeiting and selling Survey No. 28 of Satalgaon for recovery of Tagavi dues of Government. The facts of the case are as under :

In 1921 Government advanced a Tagavi loan of Rs.900/- to Mr.Ningappa Shivappa Mhetri of Satalgaon for the purpose of deepening a well in Survey No.28 and erecting bunds in Survey Nos. 215 and 216. The same three lands

File p.15 were offered and accepted as security for the loan. In 1930 a second loan of Rs.800/- was granted to the same person on the security of

File p.47 Survey Nos. 215, 216 and 209. The purpose of this second loan was the erection of bunds in S.Nos. 215 and 216. It is necessary to note at this stage that the second loan was not intended for the improvement of S.No.28 nor was that land given as security for that loan. In 1934 the borrower made default in payment of instalments due under Tagavi loan and therefore S.Nos. 215, 216 and 28 were declared forfeited to Government under section 153 of the Land Revenue Code. Subsequently, on the borrower having paid all the outstanding dues, the forfeiture order was withdrawn on 12th April 1934. The next year the borrower again failed to pay the instalments and, therefore, S.No.215 was declared forfeited to Government and ordered to be sold by public auction, but for want of bidders it is being leased every year by Government.

It appears that in or about the year 1932 the borrower Ningappa had mortgaged S.Nos. 28,

213 and 214 to the plaintiff Mr.S.C.Patil for x securing the loan of Rs.1800/-. In Civil Suit No. 145 of 1937 the plaintiff obtained against him a mortgage decree of Rs.2736/-. The decretal amount was made payable by annual instalments of Rs.470/-. The plaintiff then filed Darkhast No. 619 of 1938 for recovering the first instalment which had then become due. The Court ordered that the amount should be realised by the sale of S.No.28 and the execution proceedings were transferred to the Collector who forwarded it to the Mamlatdar.

On 3rd December 1940 the Mamlatdar issued a proclamation of sale fixing 3rd March 1941 as the date of auction sale. At or about this time, Ningappa's liabilities to Government on account of the Tagavi dues were Rs.318-10-0 for principal and Rs.94-3-0 for interest in the account of the first loan of 1921 and Rs.800/- for principal and Rs.333-15-0 for interest in the account of the second loan (see Accounts Nos. 29 and 29A at p.147 and 153). The total dues for principal and interest on both the accounts amounted to Rs.1546-12-0. The Mamlatdar consolidated the dues of both these accounts and in the proclamation of sale it was notified that the land S.No.28 could be sold subject to Government's Tagavi encumbrance of Rs.1534-12-0. The Civil Court had granted the plaintiff permission to bid at the auction sale and to set off ~~the~~ d his decretal dues as against the sale price on condition that his bid should not be lower than the panch valuation of Rs.2000/-. The plaintiff became the auction purchaser of S.No.28 by offering the highest bid of Rs.2004-2-0. The sale was confirmed by the Collector on 10th April 1941 and the sale certificate issued to the Collector and possession handed over to the plaintiff in the

same year.

The plaintiff, however, did not pay to Government Rs.1534-12-0 subject to which he had purchased S.No.28 at the auction sale.

File p.393 On 20th July 1942 he gave a notice under section 80 of the Civil Procedure Code contending that S.No.28 was only a collateral security for the amounts advanced to Ningappa who had taken the loans for improving other lands and that, therefore, those lands should have been sold first before proceeding against S.No.28. He did not file any suit after giving that notice and therefore no action was taken thereon.

Meanwhile Ningappa against whom there were several other claims made an application to the Debt Adjustment Board under section 17 of the Agricultural Debtors Relief Act, 1939 (then in force) for adjustment of his debts. On 13th March 1943 the Board passed an order holding that the plaintiff had purchased S.No.28 subject to payment of Government's Tagavi encumbrance of Rs.1534-12-0 and that therefore the borrower became free from his

File p.419 liability to Government for that amount. Relying on the Board's order Ningappa made an application on 16th September 1946 to

" p.451 the Collector contending that the plaintiff was enjoying the income of S.No.28 without paying Tagavi dues of Rs.1534-12-0, which were still outstanding, that Government was also taking the income of S.No.215, that he was therefore put to a double loss, that the Board had freed him from his liability to Government and that therefore Government should forfeit S.No.~~215~~ 28 and restore it to him.

File p. 471 On 13th July 1947 the Mamlatdar served

notice upon the plaintiff demanding the payment of Tagavi dues which had then amounted to Rs.2012-0-0. The plaintiff replied on 15th July 1947 that S.No.28 was security only for the first loan of Rs.900/- and that it could not be sold for satisfying the dues outstanding on the second loan of Rs.800/- advanced in 1930. However, on 26th July 1947, the Mamlatdar gave him a notice to pay up all the Tagavi dues as purchaser of S.No.28. Finally on 8th May 1948 the Collector passed an order that the conditions subject to which the plaintiff purchased S.No.28 were binding upon him.

File p.475

File p.481

File p. 513

On 5th July 1948 the plaintiff gave notice of suit under section 80 of the Civil Procedure Code and on 10th September 1948 he filed this suit for injunction in the Civil Court of Bijapur.

The two loans were granted to the borrower Ningappa under the provisions of the Land Improvement Loans Act of 1883. Under section 7 thereof the loans can be recovered (1) from the borrower or his surety as arrears of land revenue, (2) out of the land for the benefit of which the loans were granted as if they were arrears of land revenue due in respect of that loan or (3) out of the property comprised in the collateral security. Chapter XI of the Bombay Land Revenue Code contains the procedure for recovery of land revenue and other demands in the nature of land revenue. Under section 137 Government's claim to any money recoverable as land revenue has precedence over any other debt, demand or claim. But under section 151 the priority given to Government's dues is restricted only to demands of current year. It does not extend to demands which are in the nature of arrears of previous years. Under section 150(d) and 155 arrears

of land revenue can be recovered by the sale of the right, title and interest of the defaulter in any immoveable property other than the land in respect of which the arrears are due. But these provisions must be read subject to the rule enacted in section 151.

As stated earlier, the first loan of Rs.900/- granted in 1921 was for the purpose of improvements in S.No.28 and two other lands and the same lands were also security for that loan. The second loan of Rs.800/- granted in 1930 was not, however, secured upon S.No.28 nor was it granted for the improvement of that land. Under these circumstances the plaintiff contends that Government can recover from him their dues in the account of the first loan of Rs.900/- but not the dues in the account of the second loan because the latter cannot have precedence over the debt due to the plaintiff which was secured by a prior mortgage of S.No.28. He has paid up all the dues under the first loan by crediting Rs.539-11-0 (see p.151) and in this suit he seeks to restrain Government from recovering the amount due by forfeiting S.No.28.

It is submitted that although the plaintiff has not come to Court with clean hands, his suit will succeed on this technical ground principally because the case was not satisfactorily handled by the authorities concerned. In the first place, it is not known why the auction sale was confirmed and even possession of the land given to the plaintiff when he had not paid the full amount of the purchase money. Under Order 21 Rule 84, of the Civil Procedure Code, 25 per cent of the purchase money becomes

immediately payable and under Rule 85 the balance is to be paid by the purchaser within 15 days from the date of sale. In default of such payment, the 25 per cent paid under Rule 84 becomes liable to be forfeited to Government and the property liable to be resold (see Rule 86). In the absence of Darkhast papers it is not known why this procedure was not followed when the plaintiff made a default. Secondly, it seems that the auction sale itself was not conducted by the Mamlatdar in accordance with the Civil Court's directions. The Darkhast papers are not included in the File but from the judgment of the Debt Adjustment Board it appears that the Civil Court had fixed Rs.2000/- which was the panch valuation of the land as the upset price and the plaintiff was allowed to bid at the auction sale on condition that his bid should not be less than Rs.2000/-. Under Order 21 Rule 66, any encumbrance to which the property is liable must be mentioned in the proclamation of sale. This means that the purchaser at the auction sale has, besides paying the price, to discharge in addition the encumbrance specified in the proclamation of sale. But what actually happened at the auction sale is described in the Board's order at p.426-427. The land was not sold with an upset price of Rs.2000/- and an encumbrance of Rs.1534-12-0 but without any upset price and subject to the Tagavi encumbrance. The plaintiff then offered his bid in these words:- "My offer is Rs.470/- plus Tagavi encumbrance of Rs.1534-12-0 i.e. total Rs. 2004-12-0. This amount includes Tagavi encumbrance of Rs.1534-12-0." As a matter of fact, according to the Court's order and the sale proclamation, the plaintiff was bound to pay Tagavi encumbrance, whatever it was,

in addition to the purchase money and not that the purchase money was to be inclusive of that encumbrance. Finally, the revenue authorities do not appear to have taken any steps till 1947 to recover the Tagavi dues from him although the sale was confirmed and possession given to him in 1941. The plaintiff has been left in undisturbed enjoyment of a valuable garden land for a small sum of Rs.470/-. The Mamlatdar was initially wrong in consolidating the Tagavi dues under both the loans and encumbering the whole land when it was liable only for a part of it. The plaintiff could be entitled to contend that he undertook to pay this amount bonafide believing that the land was liable for the whole amount. He has since paid all the dues under the first loan and it seems Govt. would not be entitled to proceed against S.No.28 for the realisation of the dues on the second loan. The only way of recovery is by proceeding against second land on which second loan has been secured. The present suit seems indefensible.

The real sufferer in this case has been the judgment-debtor Ningappa. The proper course in this case was to ensure (1) that the decree holder paid the entire purchase money, the balance of which after allowing for the set off granted to him would have ~~allured~~ enured for the benefit of the judgment-debtor, (2) to recover from the decree-holder the amount of the Tagavi loan for which S.No.28 was liable ~~and~~ or (3) to set aside the sale and reauction the land on the purchaser's default. It will now be for the judgment-debtor to seek his remedies against the plaintiff for

the loss sustained by him if he is so advised. So far as this suit is concerned, Government cannot successfully defend it.

RW 4/1/49

I think an attempt should be made to defend this suit although I am not quite sanguine about the success.

The main point for consideration is whether the plaintiff having purchased at the auction sale the mortgaged property subject to the tagai encumbrance of Government in respect of the two loans due from the judgment-debtor would be entitled to disclaim his liability to pay off the encumbrance in respect of the second loan although that loan was not secured on the property sold. Order 21, rule 62 of the Civil Procedure Code provides : "Where the Court is satisfied that the property is subject to a mortgage or charge in favour of some person not in possession, and thinks fit to continue the attachment, it may do so, subject to such mortgage or charge". Order 21 rule 66 provides for notifying in the proclamation of sales by public auction any encumbrance to which the property is liable. The distinction between the auction sale of a property subject to a mortgage or charge and the auction sale of property notifying an encumbrance in the proclamation of sale appears to be this, that in the former case the auction purchaser cannot challenge the validity and existence of the mortgage whereas in the latter case the auction

purchaser buys the property with notice of the encumbrance and subject to such risk as the notice might involve and the executing Court does not decide whether the mortgage subsists or not. It was held in 'Gailu alias Dalai & others V. Lekha Singh & others'(10 Lucknow, p.343) as follows :-

> "It is clear from the phrase 'subject to such mortgage' in order XXI, rule 62 of the Code of Civil Procedure that the Code makes a distinction between the case in which property is expressly sold subject to a mortgage and the case in which notice of an alleged mortgage is given in the proclamation of sale under order XXI, rule 66 of the Code. In the former case the Court, after being satisfied of the existence of the mortgage, sells only the judgment-debtor's equity of redemption i.e., the purchaser at such a sale buys the property subject to the mortgage. In the latter case he buys the property with notice of the mortgage and subject to such risk as the notice might involve and in that case the executing Court does not decide whether the mortgage subsists or not."

In 'Izzat-un-nisa Begam V. Partab Singh' (I.L.R.,31 Allahabad,583) it was held that if the mortgage specified in the proclamation proves to be invalid, the judgment-debtor is not entitled to claim from the purchaser the amount alleged to have been due on the mortgage (see also Mulla's Civil Procedure Code, p.844). It is, therefore, clear that the Civil Procedure Code makes a clear distinction between the auction sale of immovable property subject to a mortgage or charge and the auction sale of immovable property notifying merely a mortgage encumbrance. In the present case admittedly the land was sold subject to the encumbrance of the tagai dues in respect of both the loans granted to the judgment-debtor. It is therefore apparent that it was not the sale of immovable property merely notifying an encumbrance which may or may not exist or be

valid. Consequently if it be a case of an auction sale under the Civil Procedure Code, the plaintiff would not be able to escape the liability from discharging the encumbrance even in respect of the second loan which was not secured on the land. In the present case the auction sale was held through the Collector in execution of the decree of a Civil Court. Consequently The auction sale held by the Collector would be governed by the rules framed by Government under section 70 of the Civil Procedure Code. The rules do not make any clear distinction of the type provided for in order XXI rule 62 and rule 66. However, the distinction is based on the equitable principle of estoppel and acquiescence. When a property is sold subject to a mortgage or charge and the auction purchaser purchases subject to such mortgage or charge, it would not be open to him to disown liability to pay off such mortgage or encumbrance. Whereas if a property is sold merely subject to a notice of charge or a mortgage the auction purchaser purchases it at his own risk and if the mortgage or charge turns out to be invalid or not subsisting he would get the benefit thereof and would not be liable to pay off such mortgage or charge. It may be further noted that the Debt Adjustment Board has held that by reason of the auction sale subject to the encumbrance in respect of both the tagai loans the judgment-debtc was freed from the liability to pay off those encumbrances and his other property, which was subject to the encumbrance in respect of the second loan, was free and that the auction purchaser was liable to pay the encumbrance to Government. This order of the Debt Adjustment Board has the effect

27 3/7

of a decree and the auction purchaser, who was a party to those proceedings, would be bound by the decision of the Debt Adjustment Board. In these circumstances it can be pressed that the plaintiff will have to pay the ~~encumbrance~~ dues even in respect of the second loan. A

If the R.L.A. agrees with the view taken by me, a brief on these lines would be prepared.

RK 13/1.

R.L.A I am in favour of defending the suit. A brief may be prepared on the lines suggested by C.L.R.

R
13/1

A brief has been prepared as ordered. Defence of the suit may be sanctioned. I may however submit with respect that the chances of the defence being upheld are not very bright.

RK
17/1

~~R.L.A~~ C.L.R I am not so very pessimistic. The brief as slightly amended may be approved

RK 18/1

Secy K.C.
at 6.30

R.L.A R 18/1

Secy R.D. 21.1.49

REVENUE DEPARTMENT
SECRETARIAT BOMBAY
No. 675 19/1/49 +1
dt. 19.1.1949

29 5 47

In the Court of the Civil Judge Senior Division,

Bijapur.

Civil Suit No. 366 of 1948.

1. S. C. Patil ..... Plaintiff.

vs.

1. The Province of Bombay.. Defendant.

The following is the written statement of Government in this suit.

1. With regard to the averments in paragraph 1 of the plaint the defendant submits that in darkhast No. 697 of 1938 filed by the plaintiff. The Court transferred the execution proceedings to the Collector with a direction that the darkhast amount should be realised by sale of S. No. 28. The proclamation of sale was issued by the Mamlatdar on 3rd December 1940 and it stated that S. No. 28 would be sold subject to Governments Tagavi encumbrance of Rs. 1534-12-0.

2. The above amount of Rs. 1534-12-0 included ~~of~~ Governments dues on the two tagavi loans advanced to Ningappa Metri and the plaintiff purchased the land at the auction sale with the Courts permission for Rs. 2004-12-0 which included Governments dues of Rs. 1534-12-0.

3. The plaintiff having thus purchased S. No. 28 subject to Governments encumbrance for ~~Rs~~. Rs. 1534-12-0, the Defendant submits that he is not liable to challenge the validity of the existance of the said encumbrance and that he cannot resist payment of the amount of the encumbrance even in respect of the second tagavi loan which was not secured on the land S. No. 28. The defendant submits that the suit is barred on the principle of estoppel and acquiescence.

4. The defendant further submits that the judgment debtor Ningappa Metri had made an application to the debt adjustment board under section 17 of the Agricultural Debtors' Relief Act 1939 for adjustment of his debts. In the award the Board had held that the plaintiff had purchased S. No. 28 subject to payment of Government's Tagavi encumbrance of Rs. 1534-12-0 and that therefore the borrower became free from his liability to Government for that amount and that the auction purchaser (Plaintiff) was liable to pay the encumbrance of Government. This order of the Board has the effect of a decree and the Plaintiff who was a party to those proceedings, is bound by the decision of the Debt Adjustment Board.

5. The defendant therefore submits that the plaintiff is liable to pay the dues even in respect of the second tagavi loan and that he is not entitled to any relief.

6. The suit may therefore be dismissed with costs.

District Government Pleader,
Bijapur.

District Government Pleader, Bijapur to hereby declare that what is stated in paragraphs 1 to 6 above is true according to the information received and believed to be true. This verification is made at on the day of February 1949.

District Government Pleader,
Bijapur.

28-2-49 31 93

Special Civil Suit No. 356 of 1948.

In the court of the Civil Judge, Senior Division, Bijapur.

1. Shidagouda Chanagouda Patil, Lingayat, age 44, occupation pleader, Bijapur. } Plaintiff.

Vs.

1. The Province of Bombay ... Defendant.

Herein the above-named plaintiff begs to submit his application with a prayer for permission to amend his plaint ~~is~~ as follows:-

1. The plaintiff has brought this suit to restrain the Collector of Bijapur from forfeiting and bringing to sale his Satalgaon S.No.28 of Paragana Indi Taluka Indi as stated in the plaint.

2. But through inadvertance, the plaintiff has omitted to mention in his plaint that his debtor-Ningappa Shivappa Katri of Satalgaon, Paragana Indi Taluka Indi - had approached Indi-Sindgi Board, Indi, for the adjustment of his debts due to the plaintiff from him. On account of the omission on behalf of the plaintiff to mention these details regarding his debtor's approach to the Indi-Sindgi Board, Indi, the plaintiff apprehends that there is some lacuna in his plaint. Therefore, the plaintiff is driven to make this prayer for amendment in his plaint as instituted on 10-9-1948.

3. The above proceedings has not even reached the stage of framing issues as the defendant has not put in his written statement. Further the plaintiff begs to state that he does not seek to chang the nature of his suit by the amendment sought for and

that there is no legal objection of any kind for allowing the amendment.

4. Therefore the following may be inserted in his plaint at the end of 1st para as para 1A, as his amendment:-

1A " ~~Meanwhile~~ Thereafter the plaintiff's debtor-Ningappa Shivappa Metri of Satalagaon, paragana Indi Taluka Indi, made an application for the adjustment of his debts due to plaintiff to the chairman of the Indi-Sindgi Board, Indi, which application was dealt with under No. A231 on the file of the said Chairman. As a consequence of this application, the Chairman of the said Board not only granted 20 (twnety) instalments to the debtor in substitution of the five instalments granted to the debtor by the Civil Court, but the learned Chairman of the said Board decided without jurisdiction and competancy that the Tagavi dues of the debtor due to Government, be paid by the plaintiff; further the finding of the Board that the same be recovered by sale of plaintiff's Satalgaon S.No. 28 is not only illegal but ultra-vires and without jursidiction and as such the finding is void abinitio. And if the Collector purports to execute such a decree of the Board, the Collector's action in execution proceedings is also null and void.

Therefore the plaintiff prays that this court may kindly be pleased to declare that the judgment decree or award under Indi-Sindgi Board, Indi No. A231 are null and void for want of jurisdictio in and competancy of the said Board either to enter into Tagavi dues due to Government or to dec and shift the burden of repayment of the said Tagavi dues due from the debtor to the plaintiff

5 33 65

and further to declare that the finding of the said Board declaring 'that the Government are therefore entitled to recover the Tagavi debt from the plaintiff (opponent) and not from the debtor' is also null and void."

So also at the end of para 4 of the plaint the following may be added :-

4 " So also, the suit is for a declaration that the said judgment or award ordering that the Govern--ment should recover the Tagavi debt from the creditor and not from the debtor is ill-legal and unenforceable, court fee of Rs. 18-12-0 is paid for the declaration."

So also in para 6 of the plaint after the subcaluse D of the same para the following may be inserted as sub-para (E):-

6-E. " To declare that the finding of the Charima of Indi-Sindgi Board, Indi, in his No. A-231 to the effect that 'I direct that the borrower became freed from the laibility to pay the Tagavi debt as soon as S.No. 28 was sold subject to the encumbrance of the debt and the liability became shifted on to the shoulders of the present opponent (meaning thereby the present plaintiff) as soon as the land was purchased by him subject to the encumbrance. I declare that Government are therefore entitled to recover the Tagavi debt from the opponent and not from the debtor' and similar observations elsewhere in the same judgment or award are null and void and unenforceable as the same is a finding without jurisdiction or

competancy of the said Board to decide such matters and that the Collector cannot execute the sale ".

Bijapur.
8-2-1949.

Plaintiff.

I, Shidagouda Chanagouda Patil, Lingayat, age 44, occupation pleader, the plaintiff in the suit do hereby most solemnly affirm that what is stated above is true to my best knowledge and belief.

Bijapur.
8-2-1949.

Plaintiff.

Filed in court on

R. K. Shirguppi
Pleader for the plaintiff.

Received
on 10-2-49

District Govt Pleader
Bijapur

35 67 5.1

In the Court of the Civil Judge, Senior Division, Bijapur.

at Bijapur.

1. S.C.Patil. plfr.

Vs.

1. The Province of Bombay deft.

Herein the additional written-statement of the defendant is as follows:-

1. The allegations in the amendment application are denied.

2. That the relief that the award made by the Debt Adjustment Board is illegal and void etc is barred under section 51-A of the B.A.D.R.Act.

3. That the relief prayed for cannot be granted as no notice in given to the defendant under section 80 of the Civil Procedure Code.

So it is prayed that the suit be dismissed with costs as prayed for in the original written-statment.

Dist.Govt.Pleader, Bijapur. P.T.O.

District Government Pleader, Bijapur

do hereby declare that what is stated in paragraphs 1 to 3 above is true according to the information recieved and believed to be true. This verification is made at Bijapur on day of 1949.

District Government Pleader, Bijapur

37 47

3

Bijapur Civil suit No. 366 of 1948.

In the Court of the Civil Judge Senior Division, Bijapur

at Bijapur.

1. B.C.Patil plaintiff.

Vs.

1. The Province of Bombay Govt.

Herein the defendant files the following objections to the application for amendment filed the plaintiff:-

1. The plaint as originally framed is bass footing that the second Tagai loan taken by debtor Ningappa not being secured on the suit land S.No. 28 and not being recoverable by the sale of the said land, the acution sale of that land could not be subject to that loan though it was specified in the sale proclamatio The amendment now sought is that the award in application No 231 is ultra vires, illegal and not binding on him. So the cause of action according to this amendment is quite different from the one on which the suit was based.

2. Section 51 of B.A.D.R.Act 1947 as amended by Act LXX of 1948 bars a suit in which the legality of the award is in question. So the amendment if allowed would be useless.

3. The plaintiff was a party in application No.2 and the award was passed against him making him liable to pay the whole of Tagai due from the debtor Ningappa The plaintiff was well aware of all the facts and it was open to him to question the validity of the award etc there and then. Hence this application is not bona fine.

4. No notice under section 80 of Civil Procedure Code was given by the plaintiff regarding the relief claimed in the amendment application. So the relief

claimed in the amendment application will have to refused. Hence the amendment even if allowed will be useless.

Underthese circumstances it is prayed that the amendment application be rejected with costs.

949. Sd. K.K.Rao.
Dist.Govt.Pleader,Bijapur.

"True Copy
Kulkarni
Ist.Govt.Pleader,

Suits.

Bijapur.

For a permanent injunction restraining Government from forfeiting and selling Survey No. 28 of Satalgaon for recovery of Tagavi dues of Government.

GOVERNMENT OF BOMBAY.

LEGAL DEPARTMENT.

Resolution No. 1130.

Bombay Castle, 31st January 1949.

Letter from the Collector of Bijapur, No L.A.W. 184, dated the 8th October 1948—

IN THE COURT OF THE CIVIL JUDGE (SENIOR DIVISION), BIJAPUR.

Civil Suit No. 366 of 1948.

ıidagowda Chanagowda Patil ... Plaintiff;

versus

ıe Province of Bombay ... ... Defendant.

Forwarding papers in the suit noted in the margin and requesting sanction to its defence.

Memorandum to the District Government Pleader, No. 866, dated the 24th January 1949—forwarding a copy of the brief with its accompaniments in advance.

RESOLUTION.—Sanction is accorded to the defence of the suit on the lines of the accompanying brief.

By order of the Governor of Bombay,

P. M. LAD,
Secretary to Government.

Original

G. R. No. 1130, L. D., dated 31st January 1949.

To

*The Revenue Department,
*The Commissioner, Southern Division,
*The Collector of Bijapur,
The District Government Pleader, Bijapur (with two copies of the brief).

*With a copy of the brief.

Issued
on
2/12/49

No. — of 1949.

Copy forwarded for information and guidance to

Submitted after use.
File in S. Bijapur 149 (a
7
12
A.S. Pr 13/12

41 1P3

Chronological Statement of Facts.

This suit is filed by Mr. S. G. Patil, a pleader of Bijapur, against Government for a permanent injunction restraining Government from forfeiting and selling Survey No. 28 of Satalgaon for recovery of Tagavi dues of Government. The facts of the case are as under:

File p. 15

File p. 47

In 1921 Government advanced a Tagavi loan of Rs. 900 to Mr. Ningappa Shivappa Mhetri of Satalgaon for the purpose of deepening a well in Survey No. 28 and erecting bunds in Survey Nos. 215 and 216. The same three lands were offered and accepted as security for the loan. In 1930 a second loan of Rs. 800 was granted to the same person on the security of Survey Nos. 215, 216 and 209. The purpose of this second loan was the erection of bunds in Survey Nos. 215 and 216. It is necessary to note at this stage that the second loan was not intended for the improvement of Survey No. 28 nor was that land given as security for that loan. In 1934 the borrower made default in payment of instalments due under Tagavi loan and therefore Survey Nos. 215, 216 and 28 were declared forfeited to Government under section 153 of the Land Revenue Code. Subsequently, on the borrower having paid all the outstanding dues, the forfeiture order was withdrawn on 12th April 1934. The next year the borrower again failed to pay the instalments and, therefore, Survey No. 215 was declared forfeited to Government and ordered to be sold by public auction, but for want of bidders it is being leased every year by Government.

It appears that in or about the year 1932 the borrower Ningappa had mortgaged Survey Nos. 28, 213 and 214 to the plaintiff Mr. S. C. Patil for securing the loan of Rs. 1,800.

In Civil Suit No. 145 of 1937 the plaintiff obtained against him a mortgage decree of Rs. 2,736. The decretal amount was made payable by annual instalments of Rs. 470. The plaintiff then filed Darkhast No. 619 of 1938 for recovering the first instalment which had then become due. The Court ordered that the amount should be realised by the sale of Survey No. 28 and the execution proceedings were transferred to the Collector who forwarded it to the Mamlatdar.

On 3rd December 1940 the Mamlatdar issued a proclamation of sale fixing 3rd March 1941 as the date of auction sale. At or about this time, Ningappa's liabilities to Government on account of the Tagavi dues were Rs. 318-10-0 for principal and Rs. 94-3-0 for interest in the account of the first loan of 1921 and Rs. 800 for principal and Rs. 333-15-0 for interest in the account of the second loan (see Accounts Nos. 29 and 29A at pages 147 and 153). The total dues for principal and interest on both the accounts amounted to Rs. 1,546-12-0. The Mamlatdar consolidated the dues of both these accounts and in the proclamation of sale it was notified that the land Survey No. 28 could be sold subject to Government's Tagavi encumbrance of Rs. 1,534-12-0. The Civil Court had granted the plaintiff permission to bid at the auction sale and to set off his decretal dues as against the sale price on condition that his bid should not be lower than the panch valuation of Rs. 2,000. The plaintiff became the auction purchaser of Survey No. 28 by offering the highest bid of Rs. 2,004-2-0. The sale was confirmed by the Collector on 10th April 1941 and the sale certificate issued by the Collector and possession handed over to the plaintiff in the same year.

The plaintiff, however, did not pay to Government Rs. 1,534-12-0 subject to which he had purchased Survey No. 28 at the auction sale. On 28th July 1942 he gave a notice under section 80 of the Civil Procedure Code contending that Survey No. 28 was only a collateral security for the amounts advanced to Ningappa who had taken the loans for improving other lands and that, therefore, those lands should have been sold first before proceeding against Survey No. 28. He did not file any suit after giving that notice and therefore no action was taken thereon. File p. 393.

Meanwhile Ningappa against whom there were several other claims made an application to the Debt Adjustment Board under section 17 of the Agricultural Debtors Relief Act, 1939 (then in force) for adjustment of his debts. On 13th March 1943 the Board passed an order holding that the plaintiff had purchased Survey No. 28 subject to payment of Government's Tagavi encumbrance of Rs. 1,534-12-0 and that therefore the borrower became free from his liability to Government for that amount. Relying on the Board's order Ningappa made an application on 16th September 1946 to the Collector contending that the plaintiff was enjoying the income of Survey No. 28 without paying Tagavi dues of Rs. 1,534-12-0, which were still outstanding, that Government was also taking the income of Survey No. 215, that he was therefore put to a double loss, that the Board had freed him from his liability to Government and that therefore Government should forfeit Survey No 28 and restore it to him. File p. 419. File p. 451

On 13th July 1947 the Mamlatdar served a notice upon the plaintiff demanding the payment of Tagavi dues which had then amounted to Rs 2,012-0-0. The plaintiff replied on 15th July 1947 that Survey No. 28 was security only for the first loan of Rs. 900 and that it could not be sold for satisfying the dues outstanding on the second loan of Rs 800 advanced in 1930. However, on 26th July 1947, the Mamlatdar gave him a notice to pay up all the Tagavi dues as purchaser of Survey No. 28. Finally on 8th May 1948 the Collector passed an order that the conditions subject to which the plaintiff purchased Survey No. 28 were binding upon him. File p. 471. File p. 475. File p. 481. File p. 513.

On 5th July 1948 the plaintiff gave notice under section 80 of the Civil Procedure Code and on 10th September 1948 he filed this suit for injunction in the Civil Court of Bijapur.

Grounds of Defence.

As stated earlier, the first loan of Rs. 900 granted in 1921 was for the purpose of improvements in Survey No. 28 and two other lands and the same lands were also security for that loan. The second loan of Rs. 800 granted in 1930 was not, however, secured upon Survey No. 28 nor was it granted for the improvement of that land. Under these circumstances the plaintiff contends that Government can recover from him their dues in the account of the first loan of Rs. 900 but not the dues in the account of the second loan because the latter cannot have precedence over the debt due to the plaintiff which was secured by a prior mortgage of Survey No. 28. He has paid up all the dues under the first loan by crediting Rs. 539-11-0 (*see* p. 151) and in this suit he seeks to restrain Government from recovering the amount due by forfeiting Survey No. 28.

The main point for consideration is whether the plaintiff having purchased at the auction sale the mortgaged property subject to the *tagai* encumbrance of Government in respect of the two loans due from the judgment-debtor would be entitled to disclaim his liability to pay off the encumbrance

in respect of the second loan although that loan was not secured on the property sold. Order XXI, rule 62 of the Civil Procedure Code provides : " Where the Court is satisfied that the property is subject to a mortgage or charge in favour of some person not in possession, and thinks fit to continue the attachment, it may do so, subject to such mortgage or charge ". Order XXI, rule 66 provides for notifying in the proclamation of sales by public auction any encumbrance to which the property is liable. The distinction between the auction sale of a property subject to a mortgage or charge and the auction sale of property notifying an encumbrance in the proclamation of sale appears to be this, that in the former case the auction purchaser cannot challenge the validity and existence of the mortgage whereas in the latter case the auction purchaser buys the property with notice of the encumbrance and subject to such risk as the notice might involve and the executing Court does not decide whether the mortgage subsists or not. It was held in 'Gailu *alias* Dalai and others *v.* Lekha Singh & others (10 Lucknow, p. 343) as follows :—

> " It is clear from the phrase ' subject to such mortgage' in Order XXI, rule 62 of the Code of Civil Procedure that the Code makes a distinction between the case in which property is expressly sold subject to a mortgage and the case in which notice of an alleged mortgage is given in the proclamation of sale under Order XXI, rule 66 of the Code. In the former case the Court, after being satisfied of the existence of the mortgage, sells only the judgment-debtor's equity of redemption, i.e., the purchaser at such a sale buys the property subject to the mortgage. In the latter case he buys the property with notice of the mortgage and subject to such risk as the notice might involve and in that case the executing Court does not decide whether the mortgage subsists or not ".

In " Izzat-un-nisa Begum *v.* Partab Singh" (I.L.R., 31 Allahabad, 583) it was held that if the mortgage specified in the proclamation proves to be invalid, the judgment-debtor is not entitled to claim from the purchaser the amount alleged to have been due on the mortgage (*see* also Mulla's Civil Procedure Code, p. 844). It is, therefore, clear that the Civil Procedure Code makes a clear distinction between the auction sale of immovable property subject to a mortgage or charge and the auction sale of immovable property notifying merely a mortgage encumbrance. In the present case admittedly the land was sold subject to the encumbrance of the *tagai* dues in respect of both the loans granted to the judgment-debtor. It is therefore apparent that it was not the sale of immovable property merely notifying an encumrance which may or may not exist or be valid. Consequently if it be a case of an auction sale under the Civil Procedure Code, the plaintiff would not be able to escape the liability for discharging the encumbrance even in respect of the second loan which was not secured on the land. In the present case the auction sale was held through the Collector in execution of the decree of a Civil Court. The auction sale held by the Collector would be governed by the rules framed by Government under section 70 of the Civil Procedure Code. The rules do not make any clear distinction of the type provided for in Order XXI, rule 62 and rule 66. However, the distinction is based on the equitable principle of estoppel and acquiescence. When a property is sold subject to a mortgage or charge and the auction purchaser purchases subject to such mortgage or charge, it would not be open to him to disown liability to pay off such mortgage or encumbrance. Whereas if a property is sold merely subject to a notice of charge or a mortgage the auction purchaser purchases it at his own risk and if the mortgage or charge turns out to be invalid or not subsisting he would get the benefit thereof

and would not be liable to pay off such mortgage or charge. In the present case the property was sold expressly subject to the charge of Rs. 1,534-12-0. It may be further noted that the Debt Adjustment Board has held that by reason of the auction sale subject to the encumbrance in respect of both the *tagi* loans the judgment-debtor was freed from the liability to pay off those encumbrances and his other property, which was subject to the encumbrance in respect of the second loan, was free and that the auction purchaser was liable to pay off the encumbrance to Government. This order of the Debt Adjustment Board has the effect of a decree and the auction purchaser, who was a party to those proceedings, would be bound by the decision of the Debt Adjustment Board. In these circumstances it can be pressed that the plaintiff will have to pay the dues even in respect of the second loan.

S. Rajagopalan
(New Delhi)

Civil Suit No. 366 of 1948. 415

In the Court of the Civil Judge,Senior Division,

Bijapur.

Shidagowda Chanagowda Patil
Lingayat, age 44, occupation
pleader,Bijapur. plaintiff.

Vs.

1. The Province of Bombay
(summons to be served on
the Collector of Bijapur). defendant.

Judgment.

Suit for declaration that the Government of Bombay is not entitled to order forfeiture of suit land bearing survey No.28 in satisfaction of the tagavi loan advanced under khata No.29A, for a direction to Government not to bring it to sale and for a declaration that the finding given by the Chairman of the Indi-Sindgi Board is ultra vires of law and void.

2. The plaint is based on the allegations that one Ningappa Shivappa Metri mortgaged survey Nos. 28,213 and214 to the plaintiff in 1932 for Rs.1,800, that he brought suit No.145of1937 against him ending in a decree on 23-12-1937 for Rs.2,736, that survey Nos. 215,216 and 209 were attached before judgment seeing that the mortgaged property was in--sufficient and that he filed darkhast No.697 of 1938.

3. The plaint sets forth that the said Ningappa Shivappa Metri had borrowed from Government on 12-1-1921 Rs. 900 as tagavi loan under khata No.29 on the security of survey Nos.28,215 and 216, that a proclamation of sale had been issued bringing to sale survey No.28 in satisfaction of tagavi loans amounting to Rs.1534-12-0, that the plaintiff purchased at the judicial sale survey No.28 in the belief that he was liable to pay a sum of Rs. 1534-12-0 on account of the tagavi loan and that pursuant to the judicial sale he came into possession of survey No.28.

4. The plaint further alleges that subsequent to the sale the plaintiff realised that the aforesaid Ningappa Metri had borrowed Rs.900 on 12-1-1921 under khata No.29 and a further sum of Rs. 800 on 20-1-1930 under khata No.29A on the security of survey No. 215,216 and 209, that a sum of Rs. 1534-12-0 mentioned in the sale proclamation was really the amount of two tagavi loans advanced under two different Khatas, that in consequence the plaintiff paid back the tagavi loan advanced under ~~the~~ khata No.29 only, that he took the point that survey No. 28 was unconnected with the second tagavi loan, that the Collector unwarrantably served a notice on him threatening to forfeit survey No.28, that survey No.28 cannot be forfeited or sold in satisfaction of the second tagavi loan and that notice under section 80, Civil Procedure Code, has been served on the Collector.

5. The plaintiff further avers that Ningappa Shivappa Metri made an application under the B.A.D.R. Act, that a finding was given that he should pay off the debt in 20 annual instalments, that the Chairman without jurisdiction order the plaintiff, to pay to Government the tagavi loans borrowed by Metri, that finding was also given that in default Government could bring to sale survey No.28, that such a finding is ultra vires and void, that a notice was served on the the Collector on 6-7-1948, that on the expiration of two months this suit is instituted, and that the cause of action arose on 1-7-1948.

6. The Government of Bombay in their written-statement Exh.14 contend that the plaintiff had filed darkhast No.697 of 1938, that the proclamation of sale expressly had recited that survey No.28 should be sold " subject to Government's tagavi encumbeance of Rs.1534-12-0", that the said amount consists of two tagavi loans, that the plaintiff purchased survey No.28 subject to the payment of Rs.1534-12-0, that the plaintiff cannot question the existence of the encumbrance, that he is liable to pay the entire tagavi loan, that the plaintiff's conduct

IN 47

creates the bar of estoppel, that the Chairman of the Board gave finding that the plaintiff was accountable and not Metri in respect of the tagavi loans, that the finding given by the Board amounts to a decree, that the plaintiff is bound by the decision in that proceeding that the suit should be dismissed with costs.

7. The following issues were framed in the case:-

1. Whether the plaintiff was liable to pay the tagavi loan under khata No.29A ?
2. If he is liable, whether the Government is not entitled to forfeit and sell survey No.28 ?
3. Whether the plaintiff purchased survey No.28 subject to the Government encumbrance of Rs.1534-12-0. ?
4. Whether the plaintiff is entitled to question the said encumbrance and the amount falling due to Government ?
5. Whether the Government is entitled to attach and forfe the mortgaged properties in satisfaction of the full claim ?
6. Whether the plaintiff's conduct creates the bar of estoppel ?
7. Whether the award made by the Debt Adjustment Board amounts to a decree ?
8. Whether the plaintiff is barred by the decision of the Chairman of the Debt Adjustment Board ?
9. Whether such a decision bars the present suit as res judicata ?
10. Whether the plaintiff's suit is barred under section 5 of the B.A.D.R.Act ?
11. Whether statutory notice was served on the Goverment under section 80 of the C.P.C.?
12. Whether survey No. 28 is liable to be sold and forfeited in satisfaction of the second tagavi loan ?

8. My findings are:-

1. No.	2. Does not arise.	3. Yes.
4. Yes.	5. Government cannot bring to sale survey No.28.	
6. No.	7. No.	8. No.
9. No.	10. No.	11. Yes.
12. No.		

Reasons.

9. One Ningappa Metri owned survey Nos. 28,215,216 and 209.It appears that Government granted tagavi loan to

on 12-1-1921 on the security of survey Nos. 28,215 and 216 under khata No.29. Then on 21-1-1930 a second tagavi loan was granted to him on the security of survey Nos. 215,216 and 209 under khata No.29A.It is in evidence that the said Metri mortgaged to the plaintiff survey Nos.28,213, and 214 in 1932 to secure a sum of Rs.1,800.Later, the plaintiff brought Suit No.145 of 1937 against him for the recovery of his money ending in a decree for the sale of the mortgaged properties. In due course he filed an execution petition and brought to sale suit land forming survey No. 28.

10. Now the evidence further establishes that the tagavi dues under khata Nos. 29 and 29A were not paid by Ningappa Metri.In consequence the Collector sought to recover the tagavi loans as if they were arrears of land revenue due by the said Ningappa Metri. Subsequent events happened by which the Collector put to sale survey No. 28 in execution of the mortgage decree obtained by the plaintiff" subject to Government tagavi encumbrance of Rs.1534-12-0", and the plaintiff purchased survey No.28 subject to such a condition.In due course, he came into possession of survey No.28.

11. The position briefly is this: The plaintiff purchased survey No.28 at the judicial sale in the belief that Government had lent tagavi loans aggregating to Rs.1534-12-0 on the security of survey No.28. After the auction sale and after he came into possession of survey No.28 he elicited the information that the second tagavi loan was not granted to Metri on the security of survey No.28. That being so, he paid only the tagavi dues under khata No.29 to be free of the encum-brance. The Collector did not accept his contention because he contended that survey No.28 had been sold to him subject to the payment of all the tagavi dues. The Collector in consequence served a notice on him in which it was stated that in default of payment of the tagavi dues under khata No.29A also, survey No.28 would be put to sale. On 10th September 1948 the present suit was filed on the

allegation that he was not bound to pay the tagavi dues under khata No.29A seeing that tagavi loan was not granted to Metri under khata No.29A on the security of survey No.28.

12. Mr.Shirguppi on behalf of the plaintiff argued that tagavi loan was not as a matter of fact granted under khata No.29A on the security of survey No.28, that Government cannot, therefore, recover the tagavi loan by sale of Survey No.28. As against this the Government Pleader submitted that in the sale proclamation the fact that the property was sold " subject to Government tagavi encumbrance of Rs.1534-12-0" was expressly entered, that the effect of the entry in the sale proclamation and in the sale certifi-cate is that the property is liable to encumbrance and that this circumstancex is a bar to the auction purchaser from challenging the validity and the existence of the encumbrance. He also submitted that the plaintiff has nothing to complain of and that he has got what he bargained for.

13. The point for determination is whether in this position of affairs it is open to the auction purchaser to challenge the validity and the existence of the charge subject to whhh he got the property at the auction sale.

14. Order 21, Rule 62, Civil Procedure Code, runs as follows:-

" Where the Court is satisfied that the property i subject to a mortgage or charge in favour of some person not in possession, and thinks fit to continue the attachment, it may do so, subject to such mortgage or charge ".

15. It is clear from the phrase" subject to such mortgage" that the Civil Procedure Code makes a distinction between the case in which property is expressly sold subject ~~between the case in which property is expressly sold subject~~ to a mortgage and the case is which notice of an alleged mortgage is given in the proclamation of sale under Order 21, Rule 66, Civil Procedure Code. In the former case the Court,

after being satisfied of the existence of the mortgage, sells only the judgment-debtor's equity of redemption. In other words, the purchaser at such a sale buys the property subject to the mortgage. In the latter case, he buys the property with notice of the mortgage and subject to such risk as the notice might involve. In the latter case, the executing Court does not decide whether the mortgage subsists or not. Such being the case, if there is in reality a subsisting mortgage, then the purchaser has to redeem it. If, on the other hand, the mortgage specified in the proclamation of sale turns out to be invalid, the purchaser acquires the property free from liability of the mortgage. But where after a due enquiry by the executing Court, that Court finds that the property sought to be sold is subject to a mortgage, then the auction purchaser is not at liberty to question that mortgage, but he buys that property subject to that mortgage or charge.

16. To my mind, the objection that survey No.28 sold at the judicial sale was not subject to a mortgage or charge does not come either under Order 21, Rule 62, or Order 21, Rule 66, Civil Procedure Code, seeing that the executing Court could not have investigated the claim because the charge never existed under khata No. 29A. As a matter of fact the executing Court did not decide the question whether the charge subsisted. The auction purchaser purchased the property with such risks as the ~~xxxx~~ sale proclamation involved. In other words, he was liable to pay tagavi dues if really a tagavi loan under kata No.29A had been granted on the security of survey No.28. Since survey No.28 was not subject to a charge under kata No.29 A it is saved from liability. In consequence the plaintiff is also saved from liability. I hold that Government cannot recover the loan under khata No.29A by the sale of survey No.28.

17. The next point taken is that the plaintiff's conduct creates the bar of estoppel. To bring a case within the scope of estoppel as defined in section 115.

1. There must be a representation by a person or hi

authorised agent to another in any form- a declaration, act or omission.

2. The representation must have been of the existence of fact.

3. The representation must have been meant to be relied upon. Representation even made innocently or mistakenly may operate as an estoppel.

4. There must have been belief on the part of that other in its truth.

5. There must have been action on the faith of that declaration, act or omission. The doctrin of estoppel i based on the change of position brought about by the representation.

6. The misrepresentation or conduct or negligence must have been the proximate cause of leading the other part to act to his prejudice.

7. The person claiming the benefit of an estoppel must sho that he was not aware of the true state of things. It he was aware of the real state of affairs or had means of knowledge there can be no estoppel.

18. Here both parties were under a common error in the sense that it was assumed that charge was created in fav of Government in respect of the tagavi loan under khata No29 They shared the same mistake and the plaintiff is not, ther -fore, estopped from enforcing his rights in point of law.

19. The next branch of qnquiry has reference to the finding given by the Debt Adjustment Board under the Bombay Agricultural Debtors' Relief Act, 1939, and a relevant portion of the written statement is extracted below:-

" The defendant fubhher submits that the judgment -debtor Ningappa Metri had made an application to the Debt Adjustment Board under section 17 of the Agricultural Debtors' Relief Act, 1939 for adjustment of his debts. In the award the Board had held that the plaintiff had purchased survey No.28 subject to payment of Government's tagavi encumbrance of Rs.1634-12-0 and that, therefore, the borrower became free from his liability to Government for that amount and that the auction purchaser (plaintiff) was liable to pay the encumbrance of Government. This order of the Board has the effect of a decree and the plaintiff who was a party to those proceedings is bound by the decision of the Debt Adjustment Board ".

20. The decision of the Board was in these terms:-

" I direct that the borrower became freed from the liability to pay the tagavi debt as soon as survey No.28 was sold subject to the encumbrance of the debt and the liability became shifted on to the sholders of the present opponent as soon as the land was purchased by him subject to theencumbrance I declare that Government are, therefore, entitled to recover the tagavi debt from the opponent and not from the debtor".

21. Mr. Shirguppi for the plaintiff argued that the Board was not competent to order one creditor to pay another-

creditor and consequently the judgment of the
therewith was not really the judgment of a Court Having jurisdiction.

22. The Government Pleader, on the other hand, took the point that under section 73 of the B.A.D.R.Act 1939, no Civil Court can entertain any suit in respect of the validity of any procedure or the legality of any award, order or decision of the Board.

23. Now the Act relates to the special remedy provided by it for the relief of agricultural debtors from their indebtedness. The creditor is also entitled to make an application if the Debtor has not done so before that. Consequently, the finding that the plaintiff was accountable to Government in respect of the Tagavi loans was wholly unconnected with the questions arising under the B.A.D.R.Act.The Board had no jurisdiction to decide the question. The incidental question whether the plaintiff was free from liability was unconnected with the purpose of the Act.I hold that the Board was not competent to record a finding on that issue.

24. It is noticeable that theplaint as originally framed was limited to saying that the Collector could not sell survey No.28 because the tagavi loan was not granted on the security of that land. After the suit was filed, the plaintiff prayed the Court to allow an amendment by asking for a declaration that the Board was incompetent to give findin that the plaintiff was accountable for the second tagavi loan. The Court allowed the plaintiff to amend his plaint accordingly.

25. Mr.Rao!s contention is that the amendment introduces a new cause of action not specified in the original notice and a further notice is necessary under section 80 of the C.P.C. To my mind, the relief originally asked for in the plaint is not altered by the amendment and a further notice under section 80 is, therefore, not necessary.

26. In the reult, I issue a direction to defendants not to recover the tagavi loan under Khata No.29A from the plaintiff personally or by the sale of survey No.28. I declare that the Board was not ~~now~~ competent to order the plaintiff to pay the tagavi dues under Khata No.29A. Plaintiff to recover costs of suit from defendants.

27-2-1950. Sd. A.C.Sequeira
" True Copy " Civil Judge,Sr.Dn.

Dist. Govt. Pleader,Bijapur.

Civil Suit No. 366 of 1948. 53

In the Court of the Civil Judge, Senior Division,

Bijapur.

1. Shidagowda Chanagowda Patil Lingayat, age 44, occupation pleader, Bijapur. - plaintiff.

Vs.

1. The Province of Bombay (summons to be served on the Collector of Bijapur). - defendant.

Judgment.

Suit for declaration that the Government of Bombay is not entitled to order forfeiture of suit land bearing survey No.28 in satisfaction of the tagavi loan advanced under khata No.29A, for a direction to Government not to bring it to sale and for a declaration that the finding given by the Chairman of the Indi-Sindgi Board is ultra vires of law and void.

2. The plaint is based on the allegations that one Ningappa Shivappa Metri mortgaged survey Nos. 28,213 and214 to the plaintiff in 1932 for Rs.1,800, that he brought suit No.145of1937 against him ending in a decree on 23-12-1937 for Rs.2,736, that survey Nos. 215,216 and 209 were attached before judgment seeing that the mortgaged property was in-sufficient and that he filed darkhast No.697 of 1938.

3. The plaint sets forth that the said Ningappa Shivappa Metri had borrowed from Government on 12-1-1921 Rs. 900 as tagavi loan under khata No.29 on the security of survey Nos.28,215 and 216, that a proclamation of sale had been issued bringing to sale survey No.28 in satisfaction of tagavi loans amounting to Rs.1534-12-0, that the plaintiff purchased at the judicial sale survey No.28 in the belief that he was liable to pay a sum of Rs. 1534-12-0 on account of the tagavi loan and that pursuant to the judicial sale he came into possession of survey No.28.

4. The plaint further alleges that subsequent to the sale the plaintiff realised that the aforesaid Ningappa Metr had borrowed Rs.900 on 12-1-1921 under khata No.29 and a further sum of Rs. 800 on 20-1-1930 under khata No.29A on the security of survey No. 215,216 and 209, that a sum of Rs. 1534-12-0 mentioned in the sale proclamation was really the amount of two tagavi loans advanced under two different Khatas, that in consequence the plaintiff paid back the tagavi loan advanced under ~~the~~ khata No.29 only, that he took the point that survey No. 28 was unconnected with the second tagavi loan, that the Collector unwarrantably served a notice on him threatening to forfeit survey No.28, that survey No.28 cannot be forfeited or sold in satisfaction of the second tagavi loan and that notice under section 80, Civil Procedure Code, has been served on the Collector.

5. The plaintiff further avers that Ningappa Shivappa Metri made an application under the B.A.D.R.Act, that a finding was given that he should pay off the debt in 20 annual instalments, that the Chairman without jurisdiction order the plaintiff, to pay to Government the tagavi loans borrowed by Metri, that finding was also given that in default Government could bring to sale survey No.28, that such a finding is ultra vires and void, that a notice was served on the the Collector on 6-7-1948, that on the expiration of two months this suit is instituted, and that the cause of action arose on 1-7-1948.

6. The Government of Bombay in their written-statement Exh.14 contend that the plaintiff had filed darkhast No.697 of 1938, that the proclamation of sale expressly had recited that survey No.28 should be sold " subject to Government's tagavi encumbeance of Rs.1534-12-0", that the said amount consists of two tagavi loans, that the plaintiff purchased survey No.28 subject to the payment of Rs.1534-12-0, that the plaintiff cannot question the existence of the encumbrance, that he is liable to pay the entire tagavi loan, that the plaintiff's conduct

creates the bar of estoppel, that the Chairman of the Board gave finding that the plaintiff was accountable and not Metri in respect of the tagavi loans, that the finding given by the Board amounts to a decree, that the plaintiff is bound by the decision in that proceeding that the suit should be dismissed with costs.

7. The following issues were framed in the case:-

1. Whether the plaintiff was liable to pay the tagavi loan under khata No.29A ?

2. If he is liable, whether the Government is not entitled to forfeit and sell survey No.28 ?

3. Whether the plaintiff purchased survey No.28 subject to the Government encumbrance of Rs.1534-12-0 ?

4. Whether the plaintiff is entitled to question the said encumbrance and the amount falling due to Government ?

5. Whether the Government is entitled to attach and forfeit the mortgaged properties in satisfaction of the full claim ?

6. Whether the plaintiff's conduct creates the bar of estoppel ?

7. Whether the award made by the Debt Adjustment Board amounts to a decree ?

8. Whether the plaintiff is barred by the decision of the Chairman of the Debt Adjustment Board ?

9. Whether such a decision bars the present suit as res judicata ?

10. Whether the plaintiff's suit is barred under section 51 of the B.A.D.R.Act ?

11. Whether statutory notice was served on the Goverment under section 80 of the C.P.C.?

12. Whether survey No. 28 is liable to be sold and forfeited in satisfaction of the second tagavi loan ?

8. My findings are:-

1. No. 2. Does not arise. 3. Yes.

4. Yes. 5. Government cannot bring to sale survey No.28.

6. No. 7. No. 8. No.

9. No. 10. No. 11. Yes.

12. No.

Reasons.

9. One Ningappa Metri owned survey Nos. 28,215,216 and 209.It appears that Government granted tagavi loan to his

on 12-1-1921 on the security of survey Nos. 28,215 and 216 under khata No.29. Then on 21-1-1930 a second tagavi loan was granted to him on the security of survey Nos. 215,216 and 209 under khata No.29A.It is in evidence that the said Metri mortgaged to the plaintiff survey Nos.28,213, and 214 in 1932 to secure a sum of Rs.1,800.Later, the plaintiff brought Suit No.145 of 1937 against him for the recovery of his money ending in a decree for the sale of the mortgaged properties. In due course he filed an execution petition and brought to sale suit land forming survey No. 28.

10. Now the evidence further establishes that the tagavi dues under khata Nos. 29 and 29A were not paid by Ningappa Metri.In consequence the Collector sought to recover the tagavi loans as if they were arrears of land revenue due by the said Ningappa Metri. Subsequent events happened by which the Collector put to sale survey No. 28 in execution of the mortgage decree obtained by the plaintiff" subject to Government tagavi encumbrance of Rs.1534-12-0", and the plaintiff purchased survey No.28 subject to such a condition.In due conse, he came into possession of survey No.28.

11. The position briefly is this: The plaintiff purchased survey No.28 at the judicial sale in the belief that Government had lent tagavi loans aggregating to Rs.1534-12-0 on the seaurity of survey No.28. After the auction sale and after he came into possession of survey No.28 he elicited the information that the second tagavi loan was not granted to Metr on the security of survey No.28. That being so, he paid only the tagavi dues under khata No.29 to be free of the encum-brance. The Collector did not accept his contention because he contended that survey No.28 had been sold to him subject to the payment of all the tagavi dues. The Collector in consequence served a notice on him in which it was stated that in default of payment of the tagavi dues under khata No.29A also, survey No.28 would be put to sale. On 10th September 1948 the present suit was filed on the

allegation that he was not bound to pay the tagavi dues under khata No.29A seeing that tagavi loan was not granted to Metri under khata No.29A on the security of survey No.28.

12. Mr.Shirguppi on behalf of the plaintiff argued that tagavi loan was not as a matter of fact granted under khata No.29A on the security of survey No.28, that Government cannot, therefore, recover the tagavi loan by sa of Survey No.28. As against this the Government Pleader submitted that in the sale proclamation the fact that the property was sold " subject to Government tagavi encumbrance of Rs.1534-12-0" was expressly entered, that the effect of the entry in the sale proclamation and in the sale certifi--cate is that the property is liable to encumbrance and that this circumstancex is a bar to the auction purchaser from challenging the validity and the existence of the encumbrance. He also submitted that the plaintiff has nothing to complain of and that he has got what he bargained for.

13. The point for determination is whether in this position of affairs it is open to the auction purchaser to challenge the validity and the existence of the charge subject to whhh he got the property at the auction sale.

14. Order 21, Rule 62, Civil Procedure Code, runs as follows:-

" Where the Court is satisfied that the property i subject to a mortgage or charge in favour of some person not in possession, and thinks fit to continue the attachment, it may do so, subject to such mortgage or charge ".

15. It is clear from the phrase" subject to such mortgage" that the Civil Procedure Code makes a distinction between the case in which property is expressly sold subject ~~between the case in which property is expressly sold subject~~ to a mortgage and the case is which notice of an alleged ortgage is given in the proclamation of sale under Order 21, ule 66, Civil Procedure Code. In the former case the Court.

after being satisfied of the existence of the mortgage, sells only the judgment-debtor's equity of redemption.In other words, the purchaser at such a sale buys the property subject to the mortgage.In the latter case, he buys the property with notice of the mortgage and subject to such risk as the notice might involve.In the latter case, the executing Court does not decide whether the mortgage subsists or not. Such being the case, if there is in reality a subsisting mortgage, then the purchaser has to redeem it. If, on the other hand, the mortgage specified in the proclamation of sale turns out to be invalid, the purchaser acquires the property free from liability of the mortgage. But where after a due enquiry by the executing Court, that Court finds that the property sought to be sold is subject to a mortggge, then the auction purchaser is not at liberty to question that mortgage, but he buys that property subject to that mortgage or charge.

16. To my mind, the objection that survey No.28 sold at the judicial sale was not subject to a mortgage or charge does not come either under Order 21, Rule 62, or Order 21, Rule 66, Civil Procedure Code, seeing that the executing Court could not have investigated the claim because the charge never existed i khata No. 29A. As a matter of fact the executing Court did not de the question whether the charge subsisted. The auction purchaser purchased the property with such risks as the sale proclamation involved. In other words, he was liable to pay tagavi dues if really a tagavi loan under kata No.29A had been granted on the security of survey No.28. Since survey No.28 was n subject to a charge under kata No.29 A it is saved from liability. In consequence the plaintiff is also saved from liability.I hold t Government cannot recover the loan under khata No.29A by the sale of survey No.28.

17. The next point taken is that the plaintiff's conduct creates the bar of estoppel. To bring a case within the scope of estoppel as defined in section 115.

1. There must be a representation by a person or his

authorised agent to another in any form- d declaration, act or omission.

2. The representation must have been of the existence of fact.

3. The representation must have been meant to be relied upon. Representation even made innocently or mistakenly may operate as an estoppel.

4. There must have been belief on the part of that other in its truth.

5. There must have been action on the faith of that declaration, act or omission. The doctrin of estoppel is basxed on the change of position brought about by the representation.

6. The misrepresentation or conduct or negligence must have been the proximate cause of leading the other party to act to his prejudice.

7. The person claiming the benefit of an estoppel must show that he was not aware of the true state of things. If he was aware of the real state of affairs or had means of knowledge there can be no estoppel.

18. Here both parties were under a common error in the xhx sense that it was assumed that charge was created in favour of Government in respect of the tagavi loan under khata No29A. They shared the same mistake and the plaintiff is not, there-fore, estopped from enforcing his rights in point of law.

19. The next branch of enquiry has reference to the finding given by the Debt Adjustment Board under the Bombay Agricultural Debtors' Relief Act, 1939, and a relevant portion of the writtem statement is extracted below:-

" The defendant furhher submits that the judgment-debtor Ningappa Metri had made an application to the Debt Adjustment Board under section 17 of the Agricultural Debtors' Relief Act, 1939 for adjustment of his debts. In the award the Board had held that the plaintiff had purchased survey No.28 subject to payment of Government's tagavi encumbrance of Rs.1634-12-0 and that, therefore, the borrower became free from his liability to Government for that amount and that the auction purchaser (plaintiff) was liable to pay the encumbrance of Government. This order of the Board has the effect of a decree and the plaintiff who was a party to those proceedingx is bound by the decision of the Debt Adjustment Board ".

20. The decision of the Board was in these terms:-

" I direct that the borrower became freed from the liability to pay the tagavi debt as soon as survey No.28 was sold subject to the encumbrance of the debt and the liability became-shifted on to the sholders of the present opponent as soon as the land was purchased by him subject to the encumbranc I declare that Government are, therefore, entitled to recover the tagavi debt from the opponent and not from the debtor".

21. Mr. Shirguppi for the plaintiff argued that the Board was not competent to order one creditor to pay another

creditor and consequently the judgment of the Board in connection therewith was not really the judgment of a Court having jurisdiction.

22. The Government Pleader, on the other hand, took the point that under section 73 of the B.A.D.R.Act 1939, no Civil Court can entertain any suit in respect of the validity of any procedure or the legality of any award, order or decision of the Board.

23. Now the Act relates to the special remedy provided by it for the relief of agricultural debtors from their indebtedness. The creditor is also entitled to make an application if the Debtor has not done so before that. Consequently, the finding that the plaintiff was accountable to Government in respect of the Tagavi loans was wholly unconnected with the questions arising under the B.A.D.R.Act.The Board had no jurisdiction to decide the question. The incidental question whether the plaintiff was free from liability was unconnected with the purpose of the Act.I hold that the Board was not competent to record a finding on that issue.

24. It is noticeable that the plaint as originally framed was limited to saying that the Collector could not sell survey No.28 because the tagavi loan was not granted on the security of that land. After the suit was filed, the plaintiff prayed the Court to allow an amendment by asking for a declaration that the Board was incompetent to give finding that the plaintiff was accountable for the second tagavi loan. The Court allowed the plaintiff to amend his plaint accordingly.

25. Mr.Rao's contention is that the amendment introduces a new cause of action not specified in the original notice and a further notice is necessary under section 80 of the C.P.C. To my mind, the relief originally asked for in the plaint is not altered by the amendment and a further notice under section 80 is, therefore, not necessary.

26. In the reult, I issue a direction to defendants not to recover the tagavi loan under Khata No.29A from the plaintiff personally or by the sale of survey No.28. I declare that the Board was not competent to order the plaintiff to pay the tagavi dues under Khata No.29A. Plaintiff to recover costs of suit from defendants.

27-2-1950. Sd. A.G.Sequeira
" True Copy " Civil Judge,Sr.Dn.

Dist. Govt. Pleader,Bijapur.

Suits.
Bijapur.
For a permanent injunction restraining Government from forfeiting and selling Survey No. 28 of Satalgaon for recovery of Tagavi dues of Government.

GOVERNMENT OF BOMBAY,
Legal Department,
Resolution No. 4241-A

Bombay Castle, 27th March 1950.

Read Government Resolution Legal Department, No. 1130, dated the 31st January 1949.

Endorsement from the District Government Pleader, Bijapur, No. 127, dated the 1st March 1950, forwarding copies of judgment and decree and stating that the suit noted in the margin was decided by the Civil Judge Senior Division, Bijapur, on the 27th February 1950 when the following order was passed:-

In the Court of the Civil Judge(Senior Division) Bijapur.
Civil Suit No. 366 of 1948.
Shidagowda Chanagowda Patil - - - - - -Plaintiff;
Vs.
The Province of Bombay- - - - - - - - -Defendant.

> "I issue a direction to defendants not to recover the Tagavi loan under Khata No. 29A from the plaintiff personally by the sale of survey No. 28. I declare that the Board was not competent to order the plaintiff to pay the tagavi dues under Khata No. 29A. Plaintiff to recover costs of suit from defendants."

Letter from the Collector of Bijapur No.L.A.W. 184, dated the 14th March 1950 approving the recommendation of the District Government Pleader Bijapur that an appeal should be filed against the decision of the Civil Judge, Senior Division, Bijapur, dated the 27th February 1950 and requesting sanction to the institution of the appeal.

RESOLUTION:- Sanction is accorded to the institution of an appeal in the District Court, Bijapur against the decision of the Civil Judge, Senior Division, Bijapur, dated the 27th February 1950.

By order of the Governor of Bombay,

original R. M. Mehta
R. M. MEHTA,
Assistant Secretary to Government.

submitted for sign
AS
23/3

To

The Revenue Department,
The Commissioner, Southern Division,
The Collector of Bijapur,
The District Government Pleader, Bijapur.

Issued
27/3

kam.23.3.50.

Subject file No. S. Bijapur 3/49

Presented on 4-1-1950.

63 143

Civil Appeal No. 91
1950.

In the Court of the District Judge, Bijapur.

At Bijapur.

1. The State of Bombay. — appellant--original defendant.

Vs.

1. Shidagowda Chanagowda Patil Pleader, Bijapur. — respondent-original-plff.

The appellant preferrs this appeal against the Judgment and Decree passed by the Civil Judge, Senior Division, Bijapur in Civil Suit No. 366 of 1948 for the following among other grounds:-

(1). The lower court was wrong in holding that Survey No.28 was not subject to a tagavi encumbrance

(2). The lower court ought to have held that the Government is entitled to attach and sell the said survey No.28.

(3). The lower court ought to have held that plaintiff was liable to pay the loan of Rs.1534-12-0

(4). So the findings on issues Nos. 1 to 5 are wrong and contrary to law.

(5). The learned Judge was wrong in holding that the plaintiff was not estopped.

(6). The lower court ought to have held that the decision by the Board amounts to a decree and th the said decision of the Board bars the suit.

(7). The lower court had no jurisdiction to decide that the award was made without jurisdiction.

(8). The lower court ought to have held that the Court cannot decide the legality of the award as the

was not notice under section 80 of Civil Prodadure Code.

(9). The amendment allowed by the lower court is contrary to law.

It is therefore prayed that the judgment and Decree of the lower court be reversed with costs.

Sd. K.R.Rao.

Date:- 4-1-1950. District Government Pleader, Bijapur.

" True Copy "

Dist.Govt.Pleader,Bijapur

In the District Court of Bijapur at Bijapur.

Civil Appeal No. 91 of 1950.from decree in C.S.No. 366 of 1948 of the Court of the Civil Judge,Sr.Dn.Bijapur (Shri A.C.Sequeira).

Shri A.C.Angadi. (Govt.Pleader). The State of Bombay. .... Appellant. (Orig.Deft).

Vs.

Shri G.V.Hiremath. Shidgouda Changouda Patil,Pleader,Bijapur. Respondent. (Orig.plff)

Claim Rs 18-12-0.

This is Government's appeal from a decree in a suit for a declaration that the Government has no right to order the forfeiture of the land in suit in satisfaction of the Tagai loan and also that the order of the Chairman of the Debt Adjustment Board is ultra vires.

2. The property in suit is S.No. 28 of Satalgaon in Indi Taluka. It measure 22 acres and 5 gunthas and is assessed at Rs 23-8-0. One Ningappa Metri owned the property in suit as also S.Nos. 209, 213, 215 and 216 of Satalgaon. On January 12, 1921, he took a tagai loan of Rs 900/- from Government under Khata No.29 on the security of S.Nos. 28, 215 and 216 and passed a bond ~~(Exx~~ (Ex.31). Ten years later that is, on January 20, 1930, he took a further tagai loan of Rs 800/- under Khata No. 29A on the secu--rity of S.Nos. 209, 215 and 216 and passed a bond (Ex.3).

3. On December 13, 1932, he mortgaged to the plff S.Nos. 28-213 and 214 for Rs 1800. He could not pay the mortgage amount and so the plff filed original suit No. 145 of 1937 against Ningappa for recovering the mortgage amount by sale of the mortgaged property. A decree (Ex. 36) was passed on December 23, 1947 making Rs 2736 payable in 5 annual instalments beginning from June 1, 1938.

4. Plff gave Darkhast No. 697 of 1938 to recover Rs 470/- due under the first instalment. The darkhast was transferred to the Collector. Plff brought to sale S.No. 28, the land in suit. The property was declared for sale subject to the burden of the tagai loan of Rs 1534-12-0, panchas valued the property at - and the upset price was fixed at Rs 2000. The decree-holder

(present plff) asked for permission to bid. The revenue officers granted him permission to bid on condition that he should not buy the property for a price below the upset price. The plaintiff then applied to the Civil Court for permission to set off the decretal amount against the bid amount. Ultimately, the plaintiff purchased the suit property (S.No. 28) subject to the burden of paying the tagai loan of Rs 2004-12-0. The sale was confirmed on April 15, 1941.

5. Thereafter, Ningappa, the original mortgagor, applied to the Debt Adjustment Board for adjustment of his debts. Plff was a party to those proceedings. The Board held that Ningappa was not liable to pay Rs 1534-12-0 to Government and that the present plff and the land S.No. 28 purchased by him were liable.

6. The revenue officers made a demand for Rs 1534-12-0 with future interest from the plff. The plff however paid only Rs 539-11-0, that is, the amount due in respect of the tagai taken in 1921 under Khata No. 29. The Collector said that the plff must pay the balance and that S.No. 28 in suit was liable for the payment of the balance.

7. On July 5, 1948, the plff gave a notice to Government under Sec. 80, C.P.Code, and on September 10, 1948, instituted the present suit for a declaration that S.No. 28 was not liable for making payment of the tagai loan taken under Khata No. 29A in the year 1930.

8. On February 8, 1949, plff gave an application (Ex.13) for amending his plaint saying that a declaration should be given that the Debt Adjustment Board's decision was ultra vires and not binding on him. The Government, by its written statement (Ex.17) objected to the amendment application being granted saying that a notice under section 80, C.P.C. was not given to them of this additional relief. The lower Court however granted the amendment application.

9. Ex. 14 is the deft's W.S. to the suit and Ex. 20 is the written statement to the amended plaint. Their contentions are briefly these: The plff and S.No. 28 are liable to pay the whole tagai amount of Rs 1534-12-0 subject to which the plff has purchased the suit property. The plff is estopped from pleading to the contrary. The relief claimed by the amended plaint cannot be given to him,

because no notice thereof was given under Sec. 80, C.P.C. and the plff's claim is barred under sec. 51 of the B.A.D.R. Act (28 of 1947). The deft really means that the suit is barred under sec. 51A.

10. The learned trial Judge held that the suit land was sold subject to the encumbrance of Rs 1534-12-0. The plff is not liable to pay the tagai loan under Khata No. 29A, and the Government is not entitled to forfeity and sell the suit land S.No. 28. He also held that plff is not estopped by his condu and that the decision of the Debt Adjustment Board is ultr vires and not binding on the plff. He further held that the plff's suit was not barred under sec. 51A of the B.A.D.R.Act. According to him, the suit was not bad becuase of section 80, C.P.C. In the result, he decreed plff's suit and so this appe has been filed by the deft.

11. The following four points have been urged by the learned pleader for the appellant.

(1) The plff-respondent is liable to pay the tagai loan under the Khata No. 29A and the suit land S.No. 28 can be put to sa if that amount is not paid by the plff. (2) The plff is estopped by his conduct from filing the suit. (3) The lower Court wrongly allowed the amendment without there being notic under section 80, C.P.C. about it to the defendant. (4) The suit is barred under section 51A of the B.A.D.R.Act of 1947.

12. I decide points Nos. 1,2 and 4 against the appellant and point No. 3 in its favour for the following reasons.

*14.. It is true that in execution of a decree that the respondent obtained against Ningappa, who had taken tagai loans under two khatas 29 and 29A, the respondent purchased S.No.28 subject to the liability of paying tagai loans of Rs 1534-12-0 which was in respect of the khatas. But S.No.28 was charged only as to the payment of the first tagai loan under khata 29 only and the respondent has paid the amount due under that khata. That land is not security for the tagai loan under khata 29A. And the question is whether the Govt can recover those dues from the respondent or by the sale of S.No .28.

15. According to section 7 of the Land Improvement Loans Act 19 of 1883, which gives the methods of recovery of loans like th tagai loans, the loan can be recovered (a) from the borrower or (b) from the surety, or (c) from the land for the benefit of whi the loan was taken, or (d) out of the property comprised in the collateral security. In this case, the respondent is neither a borrower nor a surety. Tagai loan under khata 29A was not taken for the benefit of the suit land (S.No. 28), which is not also comprised in the collateral security. So I do not think that the amount can be recovered from the respondent or by the sale of the suit land.

16. It is true that the suit property was sold subject to the liability of paying tagain loan under khata No. 29A also. But really that land was not subject to the liability of the tagai loan under that khata and if it was declared liable for sale subject to that liability, it was a clear mistake; and mistaken mention of liability cannot fasten the purchaser with that liability. He can be legally made to undetake the actual and real liability. It is true that due to the wrong mention of the liability, the respondent got the property cheap. But that cannot be helped. If some liability on the property other than that sepcifically mentioned would have beer discovered, a purchaser would have been compelled to satisfy it and the fact that it was mentioned would not absolve him. So consideratior such as that the respondent got the property cheap cannot make the respondent liable.

17. It is argued for the appellant that the respondent has accepted the liability and that therefore he cannot avoid it. But in the first place, the acceptance by the respondent was probably a result of misunderstanding; and besides, if he is sought to be held liable because he agreed to pay the amount, I fail to understand how the Government in their capacity of the creditor having a right to recover the tagai loan who were not parties to the agreement, can enforce it.

18. The next argument for the appellant is this: The property No. 28 was liable for the payment of tagai loan as the personal roperty of Ningappa. The property has been purchased by the

respondent and so it must be taken that he has purchased it subject to that liability.

But this argument is not acceptable. The property was neither charged nor attached and so it would have been liable only if at the time of enforcing the liability it would have still been Ningappa's property. After its sale it ceased to be his and therefore ceased to be liable. So I hold the first point against the appellant.

19. There is no substance in the second point regarding estoppel. It is true that the respondent agreed to purchase the suit land subject to the liability of paying tagai loan under khata No. 29A also. But he did so under a wrong impression that the property was liable, whereas it was really not liable. Even the Government knew or should have known that the property was not liable. So there is no representation which could be said to have misled the Government. Besides, estoppel is an equitable dectrine of altered situation and it cannot be said that by the accept--ance of liability by the respondent, the position of Govt. was prejudically affected. The tagai loan had already been given and the other modes of recovery thereof were not abandoned after the auction sale of the suit land. Lands S.Nos. 209,215 and 216 which are collateral security can still be proceeded against by the Government. So there can be no estoppel.

20. The learned trial Judge has given a declaration that the decision of the D.A.Board was not competent to order the plff to pay the tagai dues under khata No. 29A. It may, however, be noted that this prayer was not made in the original plaint, but was subsequently added by an amendment. It is argued for the appellant that this declara--tion could not be ~~xxx~~ claimed or given in this suit becaus no notice regarding that relief was given to the Govt under section 80, C.P.C. I am inclined to agree with this argumen The declaration that the decision of the Board is ultra vir is a distinct relief and not a ground for the original

relief. So a notice under section 80 was necessary and in its absence, I do not think that the lower Court would have granted that relief. I must therefore set aside the decree of the lower Court to that extent. But that does not change the decision of the case. The defendant-appellant has pleaded a bar as a result of the decision of the Board and when considering that point, the Court has to consider whether that decision would or would not create a bar and if the Court comes to a conclusion that the decision does not create a bar, the deft's contention based upon that decision must be overruled. So even if there is no prayer in the plaint, the Court can decide that matter. But even then, I must hold that the declaration given by the Court that the Debt Adjustment Board was not competent to order the plff to pay tagai lues under khata No. 29A cannot stand.

21. This takes me to the question regarding the bar under Sec. 51A of the B.A.D.R.Act 28 of 1947. When considering the question of Ningappa's debts, the Board held that it was the present respondent and not Ningappa who was liable to pay the tagai loans under both the khatas. To this decision, the respondent was also a party. But it may be noted that he was not a debtor in that case and the decision of the Board would have been conclusive only if the respondent was a debtor in that case and was declared as such by the Board. A declaration that a non-debtor is liable to pay a debt and that too to a person like the Govt which was not a party to the proceeding cannot be said to be conclusive as a result of section 51A. Besides, the liability is to Government and under the B.A.D.R.Acts the Board or Court cannot adjust such debts. So it is obvious that no bar can arise under section 51A of the B.A.D.R.Act.

22. Thus the appeal substantially fails. Although the appellant succeeds in getting deleted the declaration regarding the incompetency of the Debt Adjustment Board, that success cannot affect the substantial result of the suit. So I do not think I should depart from the usual rule, viz. costs should abide the result.

Order.

23. Appeal partly allowed. Decree of the trial Court is set aside so far as the declaration given by it that the Board was not competent

'52

to order the plaintiff to pay the tagai dues under Khata No. 29A is set aside. In other respects, the trial Court's decree stands and the appeal is dismissed. The appellant shall pay the costs of the respondent and bear its own.

31st December 1951.

Sd/- N.S.Shirikhande.
District Judge.

---

73 K : 15

Civ. A 42 k.

ಅಪೀಲಿನೊಳಗಿನ
ಹುಕುಮುನಾಮೆಯು
(ಆರ್ಡರ ೪೧, ರೂ. ೩೫).

(ಫಾರ್ಮ ನಂಬರು ೯,
ಪರಿಶಿಷ್ಟಗ, ಶಿಡ್ಯೂಲ್ ೧)

ಹುಕುಮನಾಮೆಯು

ಧಾರವಾಡ ಇಲ್ಲಿಯ ಹಿರಿಯ ಜಜ್ಜ ಕೋರ್ಟ ನ

ಮುಕ್ಕಾಮು ಧಾರವಾಡ ಇಲ್ಲಿ. ನಿ॥

ಅಪೀಲ ಮೊಕದಮೆ ನಂಬರು ೬೧ ೧೯೨೨ನೇ ಸೈಕಿ

(೧) ಪಿ ಬಾ॰ ಬಿ ನೈಲಿಖ - - -

ಅಪೀಲೆಂಟ (ಮೊದಲನೇ)

ವಿರುದ್ಧ

(೧) ಖಾಜಸಾಬ ತಂದ ಕರೀಮಸಾಬ ಕಾಲೇಖಾನ
ಕಳಸೂರ. ನಿಮ್ಮ ಎದುರಾಳಿಯವರು

ರಿಸ್ಪಾಂಡೆಂಟ (ಮೊದಲನೇ).

ಧಾರವಾಡ ಇಲ್ಲಿಯ ನೆಲ್ಲಿಖ ನೇ ಸೆಷನ್ಸ ಸದ॰ ಜಜ್ಜ ಕೋರ್ಟಿನ ಸನ್ ೧೯೨೨ನೇ
ಇಸವಿಯ ನಂಬರು ೬೧ನೇದರಲ್ಲಿ. ತಾರೀಖು ೨೬ನೇ ಸೆಪ್ಟೆಂಬರ ೩ ತಿಂಗಳ ಸನ್ ೧೯೨೨ನೇ
ಇಸವಿಯ ಹುಕುಮು ಆಗಿದ್ದು ಮೇಲೆ ಸದರೀ ಅಪೀಲು ದಾಖಲ ಮಾಡೋಣದರಲ್ಲಿ ಬಂದಿರುತ್ತದೆ.

ಮೇಲೆ ಹೇಳಿದ ಅಪೆಲ್ಲಂಟ ಪಿ. ಬಾ॰ ಬಿ ನೈಲಿಖ ಇವನು.

ಸದರಿ ತಾರೀಖಿನ ಹುಕುಮು ಆಗಿದ್ದು ಮೇಲೆ ಹೇಳಿದ ಅಪೆಲ್ಲಂಟ ಇಲ್ಲಿಯ
ಹಿರಿಯ ಜಜ್ಜ ಕೋರ್ಟಿಗೆ ಅಪೀಲು ಮಾಡಿರುತ್ತಾನೆ.

ಈ ಅಪೀಲು ಸನ್ ೧೯೨೩ ಮಿತಿಯ ೩ ತಿಂಗಳಿನ ಒಳಗ ತಾರೀಖಿನ ದಿವಸ ಹಿರಿಯ ಜಜ್ಜ ಕೋರ್ಟಿಗೆ ಬಂದಿದ್ದು
ಮುಂದೆ, ಅಪೀಲೆಂಟನ ತರ್ಫಿನಿಂದ ಅಡ್ವೊಕೇಟ ಎಸ್. ಎಸ್. ಕುಲಕರ್ಣಿ ಇವರ ಸಮಕ್ಷದಲ್ಲಿಯೂ
ರಿಸ್ಪಾಂಡೆಂಟನ ತರ್ಫಿನಿಂದ ಅಡ್ವೊಕೇಟ ಎಸ್. ಬಿ. ಕುಲಕರ್ಣಿ ಇವರ ಸಮಕ್ಷದಲ್ಲಿಯೂ

ಸುನಾವಣಿಯ ಬಗ್ಗೆ ಬಂದಿದ್ದರ ಮೇಲಿಂದ ಹೀಗೆ ಹುಕುಮು ಮಾಡುವದರಲ್ಲಿ ಬರುತ್ತದಲ್ಲ—

ನಂಬರ 2 A ನೇ ದಿನಾಂಕ ಕಾಲೇಖಾನ ಕಳಸೂರ

ಈ ಕೆಳಗೆ ವಿವರಿಸಿದಂತೆ ಈ ಅಪೀಲಿಗೆ ಆದ ವೆಚ್ಚವನ್ನು ಎಂದರೆ, ಒಟ್ಟಿಗೆ ರೂಪಾಯಿಗಳನ್ನು ಕೊಡಬೇಕು; ಮತ್ತು ಮೂಲದಾವೆಯ ವೆಚ್ಚವನ್ನು ಕೊಡಬೇಕು

ಅಪೀಲಿನ ವೆಚ್ಚವು

ಅಪೀಲಿಂಟ.	ರಕಮು. ರೂ.	ಆ.	ಪೈ.	ರಿಸ್ಪಾಂಡೆಂಟ.	ರಕಮು. ರೂ.	ಆ.	ಪೈ.
೧. ಅಪೀಲಿನಯಾದಿಯ ಬಗ್ಗೆ ಸ್ಟಾಂಪು....	೧೮			೧. ಅಧಿಕಾರ ಪತ್ರದ ಬಗ್ಗೆ ಸ್ಟಾಂಪು....			
೨. ಅಧಿಕಾರ ಪತ್ರದ ಬಗ್ಗೆ ಸದರ				೨. ಅರ್ಜಿಯ ಬಗ್ಗೆ ಸದರ	೧೦		
೩. ದಾಖಲಾದ ಕಾಗದಗಳ ಬಗ್ಗೆ ಸದರ....				೩. ದಾಖಲಾದ ಕಾಗದಗಳ ಬಗ್ಗೆ ಸದರ			
೪. ಪ್ರೊಸೆಸ್ಸುಗಳ ಬಜಾವಣಿ	೨	೮		೪. ಪ್ರೊಸೆಸ್ಸುಗಳ ಬಜಾವಣಿ			
೫. ರೂಪಾಯಿಗಳ ಮೇಲೆ ವಕೀಲನ ಫೀ	೧೪			೫. ರೂಪಾಯಿಗಳ ಮೇಲೆ ವಕೀಲನ ಫೀ ...	೧೪		
೬. ನಕಲುಗಳ ಬಗ್ಗೆ ಫೀ	೨	೪		೬. ನಕಲುಗಳ ಬಗ್ಗೆ ಫೀ			
೭. ಉಲಟ ಹರಕತಿಯ ಮೇಲೆ ವಕೀಲನ ಫೀ	೨			೭. ಹರಕತ ಅರ್ಜಿಗೆ ಸ್ಟಾಂಪು			
				೮. ಉಲಟ ಹರಕತಿಯ ಮೇಲೆ ವಕೀಲನ ಫೀ			
ಒಟ್ಟು....	೪೬	೪		ಒಟ್ಟು...	೨೪	೧೦	

ಈ ಹೊತ್ತು ತಾರೀಖು 30 ತಿಂಗಳು ಡಿಸೆಂಬರ್ ಸನ್ ೧೯೫೧ನೇ ಇಸವಿಯ ದಿನ ನಮ್ಮ ಸಹಿ ಮಾಡಿ ಮತ್ತು ಕೋರ್ಟಿನ ಮೊಹರು ಮಾಡಿ ಕೊಡಲ್ಪಟ್ಟಿತು.

ತಪಾಸು ಮಾಡಿ ನೋಡಿತು, ಸಮನಾಗಿ ಅದೆ.

ಸಬ್ಜ. R. Patil
ಕಾರಕೂನ.

ಸಬ್ಜ. N. S. Srikhande
11-1-52
ಜಿಲ್ಲಾ ಜಜ್ಜ.

ಸಬ್ಜ. R. Angadi
ಅಪೀಲಿಂಟ ವಕೀಲ.

ಸಬ್ಜ. G. N. Hiremath
ರಿಸ್ಪಾಂಡೆಂಟ ವಕೀಲ.

ಈ ಮೊಕ್ಕದಮೆಯಲ್ಲಿಯ ಪಕ್ಷಕಾರರಿಗೆ ಹೀಗೆ ಸೂಚನೆ ಕೊಡುವದರಲ್ಲಿ ಬರುತ್ತದಲ್ಲ, ಅವರು ತಾವು ಹಾಜರು ಮಾಡಿದ ಯಾವದಾಧರೂ ದಸ್ತೈವಜುಗಳನ್ನು ಅವರು (ತಿರುಗಿ) ತೆಗೆದುಕೊಂಡು ಹೋಗದಿದ್ದರೆ ಆ ದಸ್ತೈವಜುಗಳು ಅಪೀಲು ಮಾಡಿದ್ದರೆ, ಆ ಅಪೀಲು ನಿಕಾಲೆಯಾದ ಮೇಲೆ, ನಾಶ ಮಾಡುವದಕ್ಕೆ ಪಾತ್ರ[illegible] ಅಂದರೆ ಅವು ನಾಶ ಮಾಡುವದರಲ್ಲಿ ಬರುವವು.

77/15

Suits. Bijapur.

For a permanent injunction restraining Government from forfeiting and selling Survey No. 28 of Satalgaon for recovery of Tagavi dues of Government.

GOVERNMENT OF BOMBAY.
Legal Department.
Resolution No. 8947.
Bombay Castle, 29th May 1952.

Read Government Resolution, Legal Department No.4241 A dated 27th March 1950.

Endorsement from the District Government Pleader,

In the Court of the Civil Judge, (Senior Division), Bijapur. Civil Suit No. 366 of 1948. Shidagowda Chanagowda Patil Plaintiff; Vs. The Province of Bombay Defendant.	Bijapur No.107 dated the 4th January 1952, forwarding copy of judgment and stating that

Civil Appeal No. 91 of 1950 in the suit noted in the margin was decided by the District Judge Bijapur, on 31st December 1951, when the following order was passed :-

"Appeal partly allowed. Decree of the trial Court is set aside so far as the declaration given by it that the Board was not competent to order the plaintiff to pay the tagai dues under Khata No. 29A is set aside. In other respects, the trial Court's decree stands and the appeal is dismissed. The appellant shall pay the costs of the respondent and bear its own."

Endorsement from the District Government Pleader, Bijapur, No. 107, dated the 4th January 1952, stating that the decision of the appeal may be acquiesced in.

RESOLUTION:- The result of the appeal is recorded.

By order of the Governor of Bombay,

original S.W. Dhurandhar.

S.W. DHURANDHAR,
Assistant Secretary to Government

To
The Revenue Department,
The Collector of Bijapur,
The District Government Pleader, Bijapur.

Answer
29/5 Letters for sign
24/5

1/10
1/2 Subject affix cover
18 file. in S. Bijapur 3/49
[illegible]
3/5-

Solicitors SRK
2015 —

S. Bijapur 3/49
31.5.52